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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

6 | In the Matter of:

7

8 DELPHI CORPORATION,

9

10 | **Debtor.**

11

13

14 United States Bankrupt

15 One Bowling Green

16 New York, New York

17

18 January 11, 2007

19 10:14 a.m.

20

21 | B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

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1 HEARING To Consider Authorization Or Approval Of The Equity
2 Purchasing Commitment Agreement And The Plan Framework Support
3 Agreement Filed At Docket Number 6179.

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24 Transcribed By: Esther Accardi

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PROCEEDINGS

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THE COURT: Please be seated. All right. Delphi Corporation. And again, I'm sorry some of you have to stand. There is, as I'm sure you've been told, an overflow courtroom where you can hear, upstairs. So if you get tired or if you want to go now you can go. Mr. Butler?

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MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn A. Marafioti and Al Hogan from the law firm of Skadden, Arps, Slate, Meagher & Flom, LLP, on behalf of Delphi Corporation for this specially set hearing to consider authorization or approval of the equity purchasing commitment agreement and the plan framework support agreement filed at Docket Number 6179 on December 18th of last year.

14

Your Honor, we have, in our omnibus reply that was filed yesterday by the 2 p.m. deadline that was in the scheduling order, we included as an exhibit a summary of objections to the plan adjustment and framework support approval motion. That motion indicated that there were objections filed by eight parties. I want to simply, as we begin the hearing, summarize to the Court, if I may, where we stand on those objections.

22

THE COURT: Okay.

23

MR. BUTLER: The official committee of unsecured creditors has withdrawn their objection 6209 and has filed a statement of support of the motion consistent with the black

1 lined changes to the proposed agreements that were attached to
2 our omnibus reply. I'll point out that there is, in the
3 exhibit book, a -- some additional ministerial changes which
4 were cleanups that were done. But we'll get to those at the
5 appropriate time in the hearing. But the committee is now
6 supporting the motion.

7 The second objector is the official committee of
8 equity security holders. They have filed three objections at
9 Docket 6211, 6247 and 6497 and they contend to continue to
10 press those objections at today's hearing.

11 The next objection was filed by the International
12 Union of Electronic Electrical, Machine and Furniture Workers,
13 Communication Workers of America. We refer to them as the IUE-
14 CWA in these cases. They filed objections at 6242 and at 6494.
15 I believe also at 6500 but that the -- and they have agreed to
16 withdraw their objections based on some statements I'll make
17 during this opening presentation.

18 The Ad Hoc Committee of Delphi Trade Claim Holders
19 filed objections at 6254, 6501 and 6508 and they have withdrawn
20 those objections and filed a statement of support. Also
21 consistent with the documents as amended in the debtor's
22 omnibus reply.

23 Highland Capital Management, LP, is an alternative
24 bidder and a stakeholder in these cases, filed an objection at
25 6330 and they intend to prosecute that objection at today's

1 hearing.

9

2 The International Union of Operating Engineers, local
3 unions number 18S, 101S and 832S, the IUOE as we've referred to
4 in these cases, filed an objection at 6344. They've agreed to
5 withdraw that objection based on some statements I'll make this
6 morning.

7 Similarly, the International Brotherhood of
8 Electrical Works, Local 663, the IBEW and the International
9 Association of Machinist and Aerospace Workers, District 20,
10 the IAMAW, filed objections at 6367 and they have agreed to
11 withdraw their objections based on some statements I'll make at
12 this morning's hearing.

13 And finally, the United States Trustee filed her
14 objection document at Docket number 6401 and Ms. Leonhard, is
15 here to prosecute that objection on behalf of the trustee.

16 So we have three live objectors today, Your Honor.
17 They are the US Trustee, the Equity Committee and Highland
18 Capital who will be prosecuting their objections.

19 With respect to the labor union, four of our six
20 unions filed preliminary objections and one union filed a
21 supplemental objection to the framework motion which are now
22 resolved. There have been discussions with the leadership
23 and/or counsel of those unions and I have agreed to make
24 certain statements that have been discussed with those unions,
25 on the record, to make clear that the framework agreement not

1 only does not preclude but in fact requires the debtors to use
2 reasonable best efforts to go forth and work out consensual
3 arrangements with our six unions, in addition to General
4 Motors and to do a variety of other things set forth in the
5 agreements.

6 With respect to the IUE-CWA, which is our second
7 largest union and had something in access, I think, of over
8 8,000 union members who provided contributions to Delphi in
9 working at the -- our various plants, we've agreed to the
10 following statement and our plan investors have agreed to the
11 statement as well. "Delphi and the plan investors recognize
12 and appreciate the continuing contributions of the IUE-CWA and
13 its members to Delphi. Without altering the legal rights of
14 any of the parties, Delphi and the plan investors also
15 recognize that the framework agreements between Delphi and the
16 plan investors require Delphi to use its reasonable best
17 efforts to reach an agreement with the IUE-CWA that, among
18 other matters, includes a resolution of the various potential
19 union claims against Delphi and should recognize the union's
20 contributions. We've been advised in a meeting yesterday, with
21 the union, that the IUE looks forward to successfully
22 concluding these negotiations with Delphi and the plan
23 investors as part of the framework agreement."

24 Mr. Kennedy, was there anything that you wanted to
25 say?

1 MR. KENNEDY: No, that is the statement that we
2 agreed to withdraw our objection based upon it's entered into
3 the record.

4 THE COURT: Okay. Very well.

5 MR. BUTLER: Similarly, Your Honor, with respect to
6 the IAM, IBEW and IUOE, again Delphi and the plan investors
7 recognize and appreciate their continuing contributions to --
8 and that of their members, to Delphi. And without altering the
9 legal rights of any of the parties, Delphi and the plan
10 investors recognize that nothing in the framework precludes
11 Delphi from reaching consensual agreement with the IAM, IBEW
12 and IUE on the broad range of issues between them including,
13 but not limited to, appropriate attrition programs, a
14 resolution of OPEB and a resolution of claims. And the debtors
15 again reaffirm their willingness to proceed on that basis using
16 reasonable best efforts to do so.

17 As Your Honor's aware, and this is not part of the
18 statement, I'll make an editorial statement on behalf of the
19 debtors. As Your Honor's aware, these three unions do not have
20 the benefit of a GM benefit guarantee. And one of the
21 challenges that we have is to try to sort out a settlement that
22 is consensual between the parties that resolves the issues that
23 those members in those unions have not having that backstop
24 that is available to all of the other union members at Delphi.
25 And that's a challenge that we've all -- both the unions and

1 Delphi need to take squarely. And we've agreed to use our
2 reasonable best efforts to try to reach a consensual
3 arrangement with them and acknowledge here, obviously, that the
4 framework agreement, in my opinion, does not only not preclude
5 it but in fact requires it.

6 THE COURT: Okay.

7 MR. BUTLER: And I don't know if Ms. Mehlsack or Ms.
8 Robbins wants to say something.

9 MS. MEHLSACK: I do wish to say something, if I may.
10 I don't know if the Court can hear me from here.

11 THE COURT: I can hear you fine.

12 MS. MEHLSACK: What I would like to stress to the
13 Court is that the reason that we filed an objection was our
14 concern that this agreement would be used to solidify positions
15 with respect to the company's obligation to the IAM and IBEW.
16 We understand that the company is making a binding commitment
17 that the agreements reached here will not foreclose any of the
18 claims and rights that our unions have, or the negotiation of
19 an appropriate resolution, given that our plant is closing. We
20 were very concerned and we want -- we want confirmation that
21 this is a commitment that we will not be shut out given the
22 number of things that have been resolved in this set of
23 agreements from an equitable resolution to the contributions
24 that we have made and continue to make. And we want to be sure
25 that Delphi is acknowledging its commitment to resolve those

1 issues and will not rely on this agreement to say we've made
2 other commitments and now we cannot address you.

3 THE COURT: Okay. Well --

4 MS. MEHLSACK: Again, I'd like to --

5 THE COURT: Certainly, as I read it, given the
6 obligation under the agreements of the company to use its
7 reasonable best efforts to reach a consensual resolution. And
8 obviously consensual means in light of the rights of both
9 parties, which they can certainly interpret on an objective
10 basis. I think your concern is addressed.

11 MS. MEHLSACK: Obviously we don't want to be back
12 here in front of you, Your Honor. If this doesn't hold true we
13 will be, but we certainly hope not to be. We're looking
14 forward to bargaining a resolution this month.

15 THE COURT: Okay. Very well. Thank you.

16 MS. ROBBINS: Your Honor, if I may.

17 THE COURT: Yes.

18 MS. ROBBINS: Mr. Butler -- just in listening to --
19 there was one piece that was omitted. And that is your
20 recognition that a resolution should recognize the
21 contributions of the operating engineers and their members.
22 And I assume -- and I'd like to affirm that that is part of
23 Delphi's commitment.

24 MR. BUTLER: Yeah. No, I -- I think the phrase, if I
25 did not read it I apologize for doing that. The phrase that we

1 mentioned with respect to the IEW -- IUE-CWA would be
2 applicable to the other four unions. And that is that it would
3 include a resolution to various potential union claims against
4 Delphi and should recognize the unions' contributions. And
5 then there was some additional language that these three unions
6 wanted, which I've read into the record. As it relates to OPEB
7 and other things along those lines.

8 MS. ROBBINS: And, Your Honor, based on your
9 statement and Mr. Butler's statement, we too hope we don't have
10 to be in this courtroom to enforce that commitment. And we
11 anticipate being at the bargaining table in the very near
12 future, which has not occurred over the last several months.

13 THE COURT: Okay.

14 MS. ROBBINS: Thank you.

15 THE COURT: Very well. Thank you.

16 MR. BUTLER: And again, I appreciate, on behalf of
17 the debtors, Your Honor, the work done by representatives of
18 these four unions. In the company's view this framework is
19 intended to be an enabler to go into those negotiations in a
20 very serious way. And obviously under the targets here we have
21 to reach agreements in the very near future on those -- on
22 those programs.

23 Your Honor, the -- talking a little bit -- I don't
24 intend, unless Your Honor wants to hear it, but I've been
25 before you enough in this case to know that you don't need

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1 opening statements in a bench trial so I concluded not to offer
2 one.

3 THE COURT: Okay.

4 MR. BUTLER: And --

5 THE COURT: The parties should assume I've read the
6 pleadings including the ones submitted late yesterday or this
7 morning. The equity committee's third supplemental objection
8 and the declaration by the person from Highland. So, I think
9 you should just proceed with the hearing.

10 MR. BUTLER: Thank you, Your Honor. Your Honor, I
11 think there are some procedural matters we'll need to address
12 today. First based on the conversations that our firm has had
13 with the firms representing these objectors that primarily --
14 and these, I think, are all primarily Highland and/or Equity
15 Committee issues. We have a joint index of exhibits. It lists
16 121 exhibits. It actually should list 122. The 122nd exhibit
17 would be Mr. Doherty's declaration which was submitted on
18 behalf of Highland and should be marked as Exhibit number 122.

19 As I understand it, the -- there are no objections to
20 the admission of those 122 exhibits except for the following
21 items that need to be resolved. Highland has objected, or
22 indicated they have a continuing objection to documents 14
23 through 34 relating to them not being admitted for the truth of
24 the matter of future materials presented to the Board of
25 Directors.

1 The Equity Committee has objected to exhibits marked 45
2 through 54 on relevance grounds. Both the Equity Committee and
3 Highland have chosen to object to document -- exhibit number
4 62, which is the Sheehan's declaration. The debtor's are --
5 have a limited objection to Exhibits 73 and 79, as they relate
6 to -- these are either internal financial analyses of Highland,
7 which is what Exhibit 73 is and Exhibit 79 is the Houlihan
8 Lokey letter to the Board of Directors. And there have been
9 Highland --

10 THE COURT: On what? On the whole thing or on some -
11 - what's the basis of the limited objection?

12 MR. BUTLER: Just that -- I have no objection, Your
13 Honor, that that come in as a letter that was sent from
14 Houlihan Lokey to the Board. But there has been no foundation
15 for the statements to the letter. The Equity Committee is not
16 presenting Mr. -- the representative of --

17 THE COURT: Okay.

18 MR. BUTLER: -- Houlihan Lokey here. There's going
19 to be no testimony backing it up. It's a letter. It says what
20 it says.

21 THE COURT: Okay. All right.

22 MR. BUTLER: And that's our -- you know, that's the
23 issue that we have. I mean there's no question, as the
24 testimony will indicate here, that the Board considered it,
25 that the Board reviewed it and that the Board received an

1 evaluation from Rothschild regarding the letter. And all that
2 will come in. But in the absence of the Equity Committee
3 presenting Houlihan Lokey as their witness, to establish the
4 foundation and present cross examination on him -- be available
5 for cross examination as to the truth of what's in that letter
6 or, you know, any of the assertions, that's all.

7 THE COURT: Okay.

8 MR. BUTLER: And then -- those are the only -- 73,
9 and 79 are the only debtor objections. And then, Highland is
10 objecting to 117 and 118, which is the board book that was
11 reused by the Board of Directors at yesterday's board meeting.
12 118 is simply a stray article that was included in the board
13 book which was designated separately. But it's 117 and 118
14 taken together was the board book that was used regarding a
15 Highland transaction and the Board's evaluation of it at
16 yesterday's board meeting. And actually January 9th and
17 January 10th board meetings. And Highland has objected to that
18 on hearsay grounds.

19 So I think, perhaps, it would be useful if Your Honor
20 was to ask for both Highland to come up and address 14 to 34,
21 62, 117 and 118. And the Equity Committee to address 45 to 54
22 and 62.

23 THE COURT: Okay.

24 MS. STEINGART: Your Honor, Bonnie Steingart from
25 Freed Frankel on behalf of the Equity Committee. I'll go first

1 because on this issue, gratefully, I can be very brief. I
2 don't have any real objection to Mr. Sheehan's affidavit. The
3 issue is one of timing when it was coming and that it came very
4 late. But we've all been doing a lot of things very late and I
5 have no objection to Mr. Sheehan's affidavit being marked as an
6 exhibit.

7 THE COURT: Okay.

8 MS. STEINGART: As to the exhibits we've objected to
9 as to relevance, we don't think that they prove anything.
10 Certainly to the extent that they're not offered for the truth
11 of what they assert, I have no objection to the Court having
12 that pile of documents. And to the extent that the debtor
13 wants to offer those documents for the truth of their content,
14 I assume that they'll put on a witness and it can move from one
15 status just being there for the Court to review to something
16 that could be considered for the truth. Thank you, Your Honor.

17 THE COURT: All right. Well, as to the relevance
18 objection, I'll -- I'll admit then notwithstanding the
19 objection now. I'll give them whatever relevance I ascribe to
20 them. As far as the hearsay objection, we'll deal with that if
21 -- if in fact the debtor's relying on them for more than what
22 the Board considered. And that can be reserved for when
23 they're being considered.

24 MR. BUTLER: Your Honor, I think 45 through 54, just
25 so the record's clear, are actually all the presentations made

1 between the company and statutory committees.

2 THE COURT: Okay. I'm sorry.

3 MR. BUTLER: And the relevant time periods.

4 THE COURT: What the company made available to the
5 committees.

6 MR. BUTLER: Thank you, Your Honor.

7 MR. HAIL: Your Honor, this is Brian Hail from Haynes
8 and Boone, representing Highland Capital in the matter. My
9 objections to the board presentations are similar to what Ms.
10 Steingart has said. Which is simply that analysis done by the
11 Board isn't in Rothschild, isn't necessarily done -- coming in
12 for the truth of the matter. And when they move from each one
13 we can see what it's getting in for, but I understood your
14 previous decision.

15 THE COURT: All right. In fact, my disposition was
16 really as to your objections since this is the one that deals
17 with the Board matters. And so that'll stand.

18 MR. HAIL: Okay. Specifically the declaration of
19 John Sheehan, we don't have any objection except for one of the
20 paragraphs, paragraph 35, specifically reflects information
21 that is told to Mr. Sheehan, apparently by General Motors. I
22 believe that's Exhibit 62, paragraph 35, page 14. And
23 specifically we object to the second sentence continuing there
24 through the end. It talks about comments made to GM. And I
25 think he is offering that specifically for the truth of what

1 was there.

20

2 THE COURT: As long as it's -- it's for just what --
3 what he has been informed by GM, I'll admit it. Otherwise its
4 hearsay and I wouldn't admit it unless there was further
5 testimony from GM itself.

6 MR. BUTLER: Your Honor, the company -- the debtors
7 understand the Court's ruling. That's the purpose it's being
8 presented for.

9 THE COURT: Okay.

10 MR. HAIL: I have two more, Your Honor. I think
11 they're -- I think they can be briefed together. 117 is the
12 board book for January 9th and 10th. That is a large document.
13 It contains many other documents that are in and of themselves
14 hearsay, containing some news stories, other various statements
15 that are obviously hearsay. And to the extent it's coming into
16 the truth of the matter, it's objectionable.

17 MR. BUTLER: Your Honor, it's coming in the same way
18 all the other board materials are. That's the package the
19 Board got and they made their judgments based on that package.

20 THE COURT: All right. So it's -- you're not
21 offering it for the truth of what was set forth therein.

22 MR. BUTLER: It certainly is that the news articles
23 are not offering it as the truth of those news articles where
24 we would -- we would offer it for, you know, the fact that
25 those articles, that was what was widely reported. And the

1 Board received that information and attached whatever weight to
2 it, it attached to it.

3 THE COURT: Okay. And if there's other hearsay in
4 there, you're not offering that either unless you're going to
5 somehow get -- get that material in?

6 MR. BUTLER: That's correct, Your Honor.

7 THE COURT: Otherwise. Okay. Very well.

8 MR. HAIL: That's all, Your Honor.

9 THE COURT: Okay.

10 MR. BUTLER: And if Your Honor would point out as to
11 the Rothschild exhibits, which have not been objected to here,
12 those are part of -- just so we don't -- some of these -- some
13 of the exhibits have been admitted without objection. They
14 were also not board package. Obviously Rothschild packages are
15 being submitted -- these are going to be available for cross
16 examination.

17 THE COURT: Right.

18 MR. BUTLER: They'll be submitted for what they are.

19 THE COURT: Right. Okay.

20 MS. STEINGART: Your Honor, there are two other
21 procedural issues that we wanted to raise with the Court before
22 we commence --

23 MR. BUTLER: I haven't finished the exhibits.

24 MS. STEINGART: Oh, I'm sorry.

25 THE COURT: Oh, now we're going to the debtor's

1 objections.

2 MR. BUTLER: Yeah. This is just a quick -- just two
3 more.

4 MS. STEINGART: I'm truly sorry.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, we had -- I think we can
7 dispose of the simile. I mean, Exhibit 73, because this is an
8 issue of business judgment, Exhibit 73 is an analysis, internal
9 analysis, by Highland that was never presented to the Board or
10 presented to the company. We found it in discovery but it's
11 not anything that Highland asked the company to consider. So I
12 don't know what -- how it's relevant to the business judgment
13 analysis here.

14 THE COURT: Well, are you going to offer is
15 separately?

16 MR. HAIL: Yes, Your Honor. The reason is, is that
17 is a calculation of the value that is -- it's a calculation --
18 it's a series of calculations about the value of the share
19 price, in this case, and about the value that's being
20 distributed to the plan investors in the case.

21 THE COURT: But is it -- is it anymore, really, then
22 legal argument on this point. I mean, I -- I'm trying to
23 figure out -- are you going to have a witness to go through
24 this?

25 MR. HAIL: Yes. Yeah, we did, Your Honor. It's --

1 it's actually referenced in the declaration Pat Doherty that
2 was given last night. It's attached to Exhibit --

3 THE COURT: Well, is he going to testify?

4 MR. HAIL: He is.

5 THE COURT: Okay. Well, I'll reserve till I -- you
6 can object at the time of his -- he testifies on this.

7 MR. BUTLER: Okay, Your Honor. And Item number 79, I
8 think you, sort of, disposed of already. But that was the
9 Houlihan Lokey letter which we acknowledged the Board received
10 and reviewed and gave consideration to. But obviously Houlihan
11 Lokey is not participating in these proceedings and the Equity
12 has not produced him as a witness.

13 THE COURT: Right. So it would be admitted just for
14 that limited purpose.

15 MR. BUTLER: Thank you, Your Honor. Your Honor, I
16 think that then, subject to the reservations you've indicated,
17 I think that resolves all 122 exhibits.

18 THE COURT: Okay.

19 MR. BUTLER: Which I would then -- subject to those
20 things, move to be admitted into evidence subject to the bench
21 rulings made by Your Honor this morning.

22 THE COURT: Okay. So, subject to those bench
23 rulings, all of the exhibits will be admitted. (All Exhibits
24 were hereby received as Exhibit 1-122 for identification, as of
25 this date.)

1 MR. BUTLER: Thank you.

2 MS. STEINGART: We have two procedural issues that we
3 raised this morning with counsel for debtor. One has to do
4 with the fact that there have been, since the affidavits that
5 are before the Court that comprise the direct testimony of Mr.
6 Resnick and Mr. Sheehan; there have been a number of
7 significant events at -- in connection with the debtor's
8 activities on this matter.

9 One significant event was a topic we dealt with just
10 in connection with these documents, Your Honor, and that is the
11 package of materials that the Board considered at the meeting
12 held by the Board on January 9th. The other significant event
13 was the numerous amendments to the framework agreements that
14 were filed yesterday afternoon.

15 To the extent that the debtors are going to illicit
16 direct testimony from Mr. Resnick and Mr. Sheehan on these
17 matters. We believe that it's appropriate that that be done
18 before we begin our cross. The documents there, you know,
19 clearly there's going to be a substantial amount of testimony
20 on these two things. And to the extent that we're supposed to
21 cross based on direct, it's not part of the direct affidavits
22 now, to the extent that the debtors want them. And I have no
23 objection but I think that procedurally it should precede the
24 commencement of cross examination.

25 THE COURT: I don't understand what you're --

1 MS. STEINGART: Okay.

2 THE COURT: I don't understand the point you're
3 making.

4 MS. STEINGART: The debtor's are putting in
5 affidavits in lieu of direct examination, Your Honor. The
6 affidavits do not cover a series of events that occurred
7 subsequent to their preparation. The debtors want that
8 material, as far as I understand it, to be part of their case
9 in chief on this matter. They have designated exhibits that go
10 to the events subsequent to the preparation of the affidavits.
11 And it seems that before we begin our cross examination, if
12 there's going to be direct testimony on those topics, it should
13 occur.

14 THE COURT: All right. You only have -- who are your
15 witnesses?

16 MR. BUTLER: Your Honor, here's how we, sort of, see
17 it. And I can tell her -- I acknowledge -- Ms. Steingart has a
18 point that things happened yesterday that are not in
19 affidavits. And the question is how to most efficiently get
20 them before the Court and how, most efficiently, to have the
21 objectors be able to delve into those -- inquire in those. And
22 from our pers -- and what happened is, there was a board
23 meeting. And, you know, at the board meeting the company
24 decided to go forward with today's hearing and communicated to
25 Highland that which was concluded in our response that we filed

1 yesterday at 2 o'clock. And those are the two -- and the third
2 event, I suppose, is that we reached settlements with most of
3 the objectors to the hearing and those -- those settlements are
4 either reflected in the record as they are with the union
5 representatives or they are -- they are in the black lined
6 documents.

7 THE COURT: Well, do you have any additional
8 witnesses besides --

9 MR. BUTLER: Our witnesses would be, Your Honor --
10 here -- we would propose -- here's how we proposed the hearing
11 go. We would propose to start with Mr. Sheehan, present his --
12 his declaration, which has already been admitted into evidence.
13 Make him available for cross examination on any of the exhibits
14 that are before the -- the -- that have already been admitted
15 into evidence. Then we would go to Mr. Resnick, present his
16 affidavit and allow cross examination on any of the matters,
17 including anything that happened at the board meeting
18 yesterday. We're not suggesting that the cross examination
19 here can't cover the full range of exhibits. And that was
20 really our direct case. They have also called, as Your Honor's
21 aware, Mr. Miller, the chairman of the board of the company who
22 is here pursuant to Your Honor's rulings, to be cross examined
23 by them or examined by them on --

24 THE COURT: Examined.

25 MR. BUTLER: -- examined by them on whatever matters

1 that they chose to examine him on which, presumably, could
2 include eliciting whatever testimony they want to with respect
3 to yesterday's board meetings. But the fact of the board
4 meeting -- the fact that the materials reviewed by the board
5 meeting are now in evidence, the fact of what was said is
6 communicated in the debtor's omnibus reply and no, we did not
7 intend to put a witness up and go through every black line
8 change in the agreement. I mean, that was not our intention.

9 THE COURT: Okay.

10 MR. BUTLER: But certainly they're prepared -- they
11 can cross on all those.

12 MS. STEINGART: Right. Well, yeah. It's not -- well
13 then, Your Honor, to the extent that we don't cross on the
14 topic of yesterday's meeting, and I'm only talking, Your Honor,
15 about the debtor's witnesses, and that is Mr. Sheehan and Mr.
16 Resnick. If they are not cross examined on the topics of
17 yesterday's meeting or the new agreements, are the debtors
18 going to be precluded from offering -- from redirecting them on
19 those topics?

20 MR. BUTLER: You know, Your Honor, obviously this is
21 simply a benchmark --

22 THE COURT: There's -- I mean -- I'll decide that
23 when it comes up, but I'm assuming that they would be because
24 there's -- the redirect has to be based on the cross. And if
25 the cross doesn't cover this topic then I'll rely on the

1 documents themselves.

2 MS. STEINGART: Right. Well, you know, it's just in
3 terms of -- of doing cross, Your Honor. It's more efficient to
4 do it that way. Because then we're going to have to do a
5 greater re-cross.

6 THE COURT: Well, no. The debtor doesn't -- it's up
7 to the debtor to decide. The debtor has the burden of proof.
8 The debtor has to decide whether to -- what it wants to illicit
9 in direct testimony, that's all.

10 MS. STEINGART: Okay.

11 MR. BUTLER: Your Honor, if -- I mean, so we don't
12 have a procedural, you know, Ms. Steingart is, I think, created
13 a potential procedural infirmity here. From the debtor's
14 perspective we simply said, hey, the objectors can cross about
15 anything they want to and examine Mr. Miller about anything
16 they want to, including yesterday's board meeting which is now
17 in evidence in terms of materials that were looked at. If what
18 Ms. Steingart wants us to do is, prior to them beginning to
19 examine Mr. Sheehan that I call Mr. Sheehan and ask him a
20 limited number of questions about yesterday's board meeting,
21 I'm happy to do that. I mean, I don't know why that's
22 necessary but I don't want to create an infirmity here that,
23 you know, through some technicality in the record. I mean, I
24 think we all -- all of the counsel here know exactly what
25 happens and they know -- and it's represented by the exhibits -

1 -

2 THE COURT: Well, Mr. Sheehan's -- Mr. Sheehan's
3 affidavit refers to the company's decision --

4 MR. BUTLER: Right.

5 THE COURT: -- to go ahead today.

6 MR. BUTLER: Correct.

7 THE COURT: Does that affidavit predate the board
8 meeting?

9 MR. BUTLER: Yes, it was delivered -- it was actually
10 prepared and because they wanted the affidavit, there were
11 changing circumstances, we delivered the declaration at 8
12 o'clock yesterday morning, prior to the vote being taken by the
13 Board.

14 MS. STEINGART: All right. And Mr. --

15 MR. BUTLER: The meeting started on Tuesday,
16 continued on Wednesday. The Board vote was taken about 11
17 o'clock Wednesday morning.

18 MS. STEINGART: Right. And Mr. Resnick's affidavit
19 was delivered a week before that. And so, there's nothing in
20 there with respect to either the changes to the agreement or to
21 the Board's consideration. To the extent that the Court
22 believes that it's more convenient -- I was just giving the
23 opportunity -- the debtor the opportunity to put in its direct
24 case, Your Honor, before I began my cross. If the debtor
25 believes that it would be less --

1 THE COURT: If you want to cover the board meeting,
2 Mr. Butler, separately, then you should go ahead and do it.

3 MR. BUTLER: Okay. I will do that.

4 MS. STEINGART: the other issue, Your Honor, that I
5 wanted to raise, is that there will be testimony by each of the
6 witnesses about events that occurred about discussions and
7 board meetings. And usually when there's fact testimony from
8 witnesses, witnesses that are going to testify subsequently are
9 excused from the courtroom while the earlier witnesses are
10 testifying. And I consulted with debtors this morning when I
11 saw some of the witnesses in the room and asked them if they
12 would like to agree to that and they declined. So I'm asking
13 the Court to have the witnesses, prior to their testimony,
14 excluded while the others are testifying. Thank you, Your
15 Honor.

16 MR. BUTLER: Your Honor, in that matter we're
17 entitled to designate a corporate representative, we would
18 designate Mr. Sheehan who's been a corporate -- the CRO who has
19 attended all these hearings. And we would designate him as our
20 corporate representative.

21 MS. STEINGART: He's testifying first so that's okay.

22 THE COURT: So --

23 MS. STEINGART: He's testifying first so there would
24 be no --

25 MR. BUTLER: Right.

1 MS. STEINGART: -- reason to exclude him.

2 MR. BUTLER: All right. I'm not going to --

3 THE COURT: All right. And --

4 MS. STEINGART: So it's just that Mr. Resnick and Mr.
5 Miller could not be present for Mr. Sheehan's testimony. And
6 then --

7 THE COURT: And -- who are your witnesses?

8 MS. STEINGER: Just Mr. Miller, Your Honor.

9 THE COURT: And then, how about Highland?

10 MR. HAIL: Your Honor, we put in the declaration of
11 Pat Doherty and he's available for cross examination.

12 MR. BUTLER: You know, as a technical matter, Your
13 Honor, I don't think that -- I mean, it's interesting how they
14 want to deal with Mr. Miller, it's their witness. So --

15 MS. STEINGART: We'll start with Mr. Miller. You
16 know, I was expecting the debtor to put Mr. Miller on during
17 the debtor's direct case. Once the debtor rests, after
18 presenting Mr. Sheehan and Mr. Resnick, I'll put on Mr. Miller.

19 THE COURT: Okay. All right. I don't know. Mr.
20 Resnick, do you want to go out and read your blackberry for an
21 hour or so? He's not testifying as an expert so I think it is
22 appropriate to have him leave, but he'd probably be happy to.
23 Just save him a seat.

24 MR. BUTLER: Could I have just a moment, Your Honor,
25 to confer with counsel?

1 THE COURT: Yes.

2 MR. BUTLER: Your Honor, I just conferred with --
3 excuse me for one more, Your Honor. Your Honor, I just
4 conferred with counsel for the three remaining objectors.
5 Again, I think we now -- to make this efficient, what we've
6 decided to do, subject to Your Honor's approval, is with
7 respect to the matters of yesterday's board meeting, Mr. Miller
8 is here as the chairman of the company. He's been called by
9 the equity committee and they've agreed that, as Highland has
10 agreed, that my re-direct of Mr. Miller can expand beyond the
11 cross of the -- the examination they do and can cover anything
12 with respect to the --

13 THE COURT: All right. That makes sense.

14 MR. BUTLER: So I think -- I think we can resolve it
15 in that way. And if that being the case, then I think that the
16 appropriate thing to do now would be to present the exhibit of
17 Mr. Sheehan. It's been admitted into evidence as Exhibit
18 number 62, subject to cross examination by the parties.

19 THE COURT: Okay. All right. That's fine. Do any
20 of the objectors wish to cross examine Mr. Sheehan?

21 MS. STEINGART: Yes, Your Honor, I do.

22 THE COURT: Okay. Why don't you come up to the
23 witness box then?

24 MR. HAIL: Your Honor, this is Highland, we'll cross
25 after Ms. Steingart.

1 THE COURT: Okay. Do -- would you raise your right
2 hand, Mr. Sheehan?

3 (Witness is duly sworn.)

4 THE COURT: And would you spell your name for the
5 record, please.

6 THE WITNESS: John, J-O-H-N, Sheehan, S-H-E-E-H-A-N.

7 THE COURT: Okay.

8 MS. STEINGART: Before Mr. Sheehan begin, Your Honor,
9 I had asked that -- because each of the witnesses will be
10 testifying about facts that each of the witnesses should not be
11 present while -- before their testimony is given. And that
12 would apply to witnesses being called by Mr. Hail as well as
13 witnesses being called by the Equity Committee.

14 THE COURT: Well, maybe we could make some progress
15 in the case if Mr. Miller and Mr. Doherty go out too, I don't
16 know. I mean I --

17 MR. HAIL: Your Honor, I mean -- we're entitled --
18 he's entitled to a designated corporate rep, Mr. Doherty is my
19 corporate rep.

20 THE COURT: Well, that's true. That's true. And Mr.
21 Miller is really your witness, right?

22 MS. STEINGART: Well, he's my witness but Your Honor,
23 I don't think that there's any -- Mr. Miller -- I would never
24 call Mr. Miller hostile. He's one of the most gracious
25 gentlemen I've ever met. But for purposes of this hearing he

1 is our hostile witness and I don't think there's any dispute
2 about that. So I don't think he should be present for the
3 testimony of both Mr. Sheehan and Mr. Resnick.

4 THE COURT: All right. That's fair. So, you can --
5 Mr. Miller you can give up your seat too. Of course the -- the
6 premise of my denying the motion to quash with regard to Mr.
7 Miller is that this would not be cumulative testimony. So I'm
8 going to hold you to that Ms. Steingart. But that being said,
9 we'll call you.

10 MS. STEINGART: Thank you, Your Honor.

11 CROSS EXAMINATION BY

12 MS. STEINGART:

13 Q. Good morning, Mr. Sheehan.

14 A. Good morning, Ms. Steingart.

15 MR. BUTLER: Your Honor may I -- I'm sorry. Can
16 counsel approach for one second?

17 THE COURT: Okay.

18 MS. STEINGART: Your Honor, I can wait until Mr.
19 Butler returns.

20 THE COURT: Okay. Okay.

21 Q. Now, Mr. Sheehan, you played a role in negotiating the
22 agreements, and when I say agreements I'm referring to the plan
23 support agreement and the EPCA that's currently before the
24 Court this morning, okay? So you played a role in negotiating
25 the agreements on behalf of the company, correct?

1 A. Yes, I did.

2 Q. And you were one of the lead negotiators, weren't you?

3 A. Yes, I was.

4 Q. Okay. And in that capacity you are familiar with the
5 alternate transaction and breakup fees -- or breakup fees in
6 this case, correct?

7 A. There is an alternative transaction fee that is called for
8 under the agreements.

9 Q. And that is in the equity purchase and commitment
10 agreement, right?

11 A. That is correct.

12 Q. Now, you understand that those -- that that kind of a fee
13 has a purpose, right?

14 A. Yes, I do.

15 Q. That there's a purpose for those kinds of fees. And
16 that -- and that the purpose is to protect an investor who has
17 committed capital in the case that the transaction doesn't take
18 place, right?

19 A. I'm sorry. Ask the question again, I'm sorry.

20 Q. You understand that the purpose of an alternate
21 transaction fee is to protect an investor who has committed
22 capital in case the transaction doesn't take place?

23 A. Yes, ma'am.

24 Q. And such a fee compensates a potential investor for its
25 time and efforts if the deal doesn't happen, right.

1 A. That it -- and the cost that it's incurred through --
2 through the work it has put in, yes.

3 Q. But this case we also have expenses, right? We have a
4 breakup fee and we have expenses in addition to the breakup
5 fee, right?

6 A. We have expenses.

7 Q. And the expenses aren't even capped from December -- from
8 the beginning of December the investors get to put their
9 expenses to the company and there's no limit to those expenses,
10 correct?

11 A. Your question was, if there was a limit to the expenses
12 that they've incurred up until December?

13 Q. No, my question was, it's your understanding that in
14 addition to the breakup fee, that there is a provision that
15 provides the investors with their expenses, correct?

16 A. There is a provision that provides for the plan investors
17 to receive reimbursement for their reasonable expenses incurred
18 in conjunction with the transaction agreements.

19 Q. Right. And that's separate from the alternate transaction
20 fee, right.

21 A. That is correct.

22 Q. And in addition to it?

23 A. Yes, ma'am.

24 Q. Okay. And -- so the alternate transaction fee here, the
25 primary purpose of it, is to compensate the investor for the

1 commitment if the deal doesn't happen, right?

2 A. As well as the -- all of the time and the cost that the
3 plan investors invested during a long period of time, yes.

4 Q. Okay. So -- so -- other than the time they spent, what
5 costs do they have that aren't covered by the expense
6 reimbursement?

7 A. The other costs that they would have is, the -- let me
8 call it the opportunity to have been spending all of the last
9 six months alternatively investing in another transaction
10 reserving their capital for the -- for Delphi's transaction
11 that they were not able to invest -- they would have been able
12 to spend other time investing in another transaction rather
13 than the Delphi transaction.

14 Q. Now, in this transaction the investors are getting
15 commitment fees, right?

16 A. Yes, ma'am.

17 Q. And that's in addition to the alternative transaction fee,
18 correct?

19 A. That is correct.

20 Q. Now, doesn't those -- don't those commitment fees
21 compensate them for the fact that they can have their money
22 otherwise engaged?

23 A. It does, during the period that the money's at risk, yes.

24 Q. Okay. So let's talk about now, again, go back to the
25 alternative transaction fee in this case.

1 A. Uh-huh.

2 Q. Okay. So we've ascertained that their expenses and costs
3 are paid because they have an uncapped expense provision,
4 right? Correct?

5 A. Uncapped from the perspective that there is no upward
6 ceiling other than we -- the debtors have the opportunity to
7 review them for reasonableness.

8 Q. Right. And we don't think they're going to be
9 unreasonable?

10 A. No, we do not.

11 Q. No, okay. But -- so, you're going to pay off all their
12 fees because they're not going to go out and do things that
13 are -- that could embarrass them and the company, right? Okay.
14 And we've also agreed that they have commitment fees to cover
15 the, how shall we say, tying up of funds. And we'll deal later
16 with tying -- what's tied up here. But conceptually the
17 agreements provide that commitment fee, right?

18 A. Yes, ma'am.

19 Q. So let's go back to the alternative transaction fee. The
20 alternative transaction fee here, okay, then the primary
21 purpose of it is to compensate an investor who has committed to
22 a transaction in the case that transaction doesn't take place?

23 MR. BUTLER: Objection. Asked and answered twice
24 before.

25 THE COURT: Why don't you just ask him the next

1 question? I mean, you're just setting up the question, right?

2 MS. STEINGART: Well, I'm trying -- I'm trying to,
3 sort of, isolate what the alternate transaction fee is being
4 used for in this case, Your Honor. And I'm trying to get that
5 information --

6 THE COURT: Well, let's just then focus on locking up
7 a committed investor, that's where you're going, right?

8 MS. STEINGART: I'm sorry?

9 THE COURT: You're going to the purpose of locking up
10 a committed investor?

11 MS. STEINGART: Yes.

12 THE COURT: Okay.

13 MS. STEINGART: Well, and that -- that and other
14 things, Your Honor.

15 THE COURT: All right.

16 MS. STEINGART: Okay.

17 Q. So during your deposition you recognized and you testified
18 that your understanding that the alternative transaction fee
19 compensated the other party or here the plan investors to the
20 extent that the company chose to pursue other transactions or
21 willfully breached the agreements after the time both sides are
22 committed, correct?

23 A. Yes, I did.

24 Q. Now, here it was not part of the rewards for your
25 justification the alternate transaction fee that it should

1 encourage the plan investors to be the first bidders to come in
2 and make an offer, correct?

3 A. No, ma'am.

4 Q. And indeed, the investment agreement has no provisions in
5 place for soliciting expressions of interest, does it?

6 A. Soliciting exp --

7 Q. Expressions of interest for person other than AHC?

8 A. No it does not.

9 Q. And there's no process in place for the company to
10 consider competing bids, right?

11 A. There's no formal process in place, no.

12 Q. Right. And there's nothing certainly out in the public
13 either in the agreements you filed with the Court or in any
14 other document that provides others who might be interested in
15 approaching the company with a process for doing that, right?

16 A. There's nothing that precludes that occurring, no.

17 Q. But there's not a process so that people who might be
18 interested would know how to do that, right?

19 A. We have not instituted any formal process, if that's your
20 question.

21 Q. Right. Well, you're the chief restructuring officer,
22 right?

23 A. Yes, ma'am.

24 Q. And in other situations where there are alternate
25 transaction fees the company provides information to people

1 about how they become a qualified bidder, right?

2 A. I have not been involved in such a situation but I could
3 imagine there may be.

4 Q. And here there's really not information out there about
5 who the company would consider a qualified bidder, right?

6 A. We've not put in any information such as that out in the
7 market place other than through the fact that Delphi is a very
8 large and public process which there's a lot of people who
9 follow the company, investors who follow the company, excuse
10 me.

11 Q. So the alternative transaction fee is in place but it's
12 not an alternative transaction fee the company sees as a
13 mechanism for getting other bids, correct?

14 A. We do not view it as a mechanism for soliciting further
15 bids, no. I think that's fair.

16 Q. Now here the alternative transaction fee becomes due and
17 payable when the Board exercises its fiduciary out and goes
18 with the better deal, right? Under the EPCA?

19 A. There are two situations. One of them is that if the
20 company was to pursue an alternative transaction, that's
21 correct.

22 Q. Okay. And its payable if Delphi willfully breaches the
23 agreement and then enters into a transaction in twenty-four
24 months, right?

25 A. That is the second provision, that is correct.

1 Q. Okay. Now when you were discussing the agreements that
2 are before the Court with the Board, and I'm talking before
3 this last meeting, I'm talking the meetings in the prior time,
4 you didn't intend to do that circumstances would arise where
5 the alternative transaction fee might become due and payable
6 before the parties had agreed to something sufficient to
7 justify that fee, right?

8 A. I'm sorry, can you ask that question again, excuse me?

9 Q. When you were talking to the Board about the alternative
10 transaction fee, neither you nor the Board intended that that
11 fee become due and payable until after the parties had agreed
12 to something to justify that, right?

13 A. I suppose that's correct.

14 Q. Well, you supposed it when I deposed you so --

15 A. I beg your pardon?

16 Q. You supposed it when I deposed you.

17 A. Okay.

18 Q. So I guess that's still true then, right?

19 A. I guess its still true.

20 Q. Okay. And when you were negotiating the deal you also
21 thought that the alternative transaction fee should be due and
22 payable, if at all, only after there was a settlement with the
23 labor unions, right?

24 A. I think that the alternative transaction fee is payable
25 after this agreement is approved.

1 Q. I'm sorry?

2 A. I said I think the alternative transaction fee, under the
3 investment agreements, is payable if we pursue another
4 alternative -- the Board approves another transaction or it
5 willfully breaches the agreement after these investment
6 agreements are approved.

7 Q. But I'm asking you about what you and the Board discussed
8 concerning the alternative transaction fees at the time -- in
9 the November/December time frame, okay?

10 A. The --

11 MS. STEINGART: Can we have a copy of the witness's
12 transcript?

13 Q. So during that period of time, when you were negotiating
14 the deal, it was your thought that the transaction fee should
15 not be due and payable, if at all, until there was a settlement
16 with the labor unions, right?

17 THE COURT: I'm sorry; you're talking now before the
18 agreement was entered into?

19 MS. STEINGART: Right, Your Honor. I'm trying --

20 THE COURT: All right.

21 Q. Well, sir, would it refresh your recollection if you
22 looked at your deposition transcript with me?

23 MS. STEINGART: Could we provide one for the Court?

24 THE COURT: Yes.

25 MR. BUTLER: It's also in the exhibit binder at

1 Exhibit 74.

2 THE COURT: Oh, okay, never mind. I got it.

3 Q. Sir, I'd like you to turn to page 125. And 125, we could
4 begin on line 21 but the more fulsome question is the question
5 before. Do you want to read it to yourself, beginning on 15
6 and going to 126, line 12? Sir, so I asked you when you were
7 negotiating this deal you thought the alternative transaction
8 fee should be due and payable, if at all, only after there was
9 a settlement with labor unions, right?

10 MR. BUTLER: Objection. That's not what his
11 deposition testimony says, what is characterized.

12 A. I think what I said was --

13 THE COURT: I'll sustain that.

14 Q. Sir, did you indicate that it was important that the
15 alternative transaction be payable once there was a settlement
16 with General Motors and a settlement with labor?

17 A. My full response to your question was that I recall that
18 the discussions were that the company needed to make sure that
19 the -- that the company did not -- the debtors did not obligate
20 themselves to be paying an alternative transaction fee before
21 such time as parties were signed up to the transaction. And,
22 therefore, it was important that the alternative transaction
23 fee be payable once there was a settlement with General Motors
24 and settlement with labor. I've already described to you the
25 sequence in which this will happen and that the alternative

1 transaction fee will be payable after such time that that takes
2 place.

3 Q. All right. And that wasn't what happened was it? There
4 wasn't -- the alterative transaction fee was not un --

5 MS. STEINGART: I'll strike that.

6 Q. The alternative transaction fee was not unavailable in the
7 first round of agreements that you put before this Court until
8 after the GM and labor settlement, was it?

9 A. No. I think the transaction fee is payable after this
10 agreement is approved by the Court.

11 Q. When you were talking to the Board --

12 A. Uh-huh.

13 Q. You're here describing discussions with the Board --

14 A. Yes, ma'am.

15 Q. -- and that its important that the transaction fee be
16 payable once there was a settlement with General Motors and
17 labor, right?

18 A. After the parties were signed up to the transaction and
19 that once there was a settlement with General Motors and labor
20 that the transaction fee was payable, yes.

21 Q. Right. And so in the first set of agreements the
22 transaction fee was payable before there was an agreement with
23 GM or labor, right?

24 A. I think that's correct.

25 Q. And even now, if this Court approves the agreements

1 before, the alternative transaction can be triggered before
2 there is an agreement with GM or labor, right?

3 A. I believe that's correct.

4 Q. Now, as time went on and you presented the first set of
5 transactions -- first set of agreements to this Court, did you
6 go back and tell the Board that the discussion you had about
7 the transaction fee not being available until after the GM and
8 labor settlement was not achieved? Did you go back and tell
9 them that?

10 MR. BUTLER: Objection. That's not what the
11 testimony says. He didn't testify in his deposition that he
12 told the Board that the alternative transaction would --

13 THE COURT: I think she's going off the deposition
14 now, right?

15 MS. STEINGART: I am, I'm going off.

16 THE COURT: You're saying has the Board been informed
17 that, as currently drafted, the agreement permits the
18 triggering of the alternative transaction fee before there's an
19 agreement with GM or with labor?

20 THE WITNESS: Yes, I believe, the Board understands
21 that, Your Honor.

22 Q. And the Board understood that on December 11?

23 A. I believe they did.

24 Q. And did you explain to them why you were recommending that
25 they agree to a situation where an alternative transaction fee

1 should be payable to the plan investors before an agreement
2 with labor and GM?

3 A. We negotiated many and all aspects of the agreements and
4 we sought to put in place the best agreement that we could
5 negotiate with the plan investors. And once we had fully
6 negotiated that we presented it to the Board as, what we
7 believed to be, a fairly and fully negotiated agreement and in
8 the best interest of the estate to move forward.

9 Q. Did you ever provide the Board with a summary of the
10 different fees that were payable and the different
11 opportunities for the plan investors to terminate the
12 agreement?

13 A. We presented the Board with a summary of the investment
14 agreement.

15 Q. And did you explain to the Board in that summary that one
16 day before the effective date that the plan investors could
17 walk away?

18 A. I think that the summary provides a description of the
19 termination events that are provided for under the investment
20 agreement.

21 Q. Why don't we look at the summary? Now can you tell me
22 where in the summary you explain to the Board that the plan
23 investors could cause -- could terminate the day before the
24 effective date?

25 A. There is on page 4 of the agreement the events that would

1 permit either the company or the plan investors, or each of
2 them mutually, or for regulatory reasons to be able to
3 terminate the agreement.

4 Q. And where does it say that the plan investors can just, on
5 their own, first terminate the plan support agreement and then
6 terminate the EPCA on a day before the effective date?

7 MR. BUTLER: Objection, Your Honor. As Ms. Steingart
8 knows, that's not what the agreements before the Court today
9 state.

10 THE COURT: Well, you can bring that out.

11 MS. STEINGART: We're getting there.

12 THE COURT: I'll overrule that one.

13 A. Can you ask your question again, please?

14 Q. Where does your summary state that the plan investors, as
15 a result of their own unilateral act, can a day before the
16 effective date terminate both the plan support agreement and
17 EPCA?

18 A. That specific language is not on that document.

19 Q. And why don't we try to look at this general --

20 MR. BUTLER: I'm sorry. Your Honor, I haven't been
21 provided with a copy of this.

22 MS. STEINGART: And I haven't been a copy of your
23 documents, that's right.

24 MR. BUTLER: No. Ours are in evidence. Ours have
25 been admitted into evidence, every one of them.

1 MS. STEINGART: We can talk about this, but I reserve
2 the right to not list the demonstratives, Your Honor. Because
3 it was a moving target. Last night I had to change them all.

4 MR. BUTLER: Your Honor, she has to at least share
5 that demonstrative so I know what --

6 MS. STEINGART: I'll share --

7 THE COURT: I don't have a problem with demonstrative
8 exhibits. I assume you all know these triggers inside and out
9 by now and probably recite them in your sleep. But I'd like a
10 copy.

11 MR. BUTLER: May I ask, Your Honor, if they have
12 other demonstratives in this Court --

13 THE COURT: Yeah, that would be helpful. If you do
14 have others if you could give a copy to the debtor's counsel
15 now so that someone can look at them.

16 MR. BUTLER: I mean, are there any other
17 demonstratives that Highland or the equity committee have that
18 they're going to use in this hearing.

19 MS. STEINGART: Do you believe that I have an extra.

20 THE COURT: You also give those to Skadden now.

21 MS. STEINGART: I would like not to give it the
22 witness, if that's possible.

23 THE COURT: No. Just give it to counsel.

24 Q. Now you've made numerous presentations to the Board,
25 haven't you, Mr. Sheehan?

1 A. Yes, ma'am.

2 Q. And would you say that you have a good sense what the
3 Board can understand and extrapolate from documents you place
4 before it?

5 A. I believe I do.

6 Q. Okay. Now looking at the summary that I've handed to you,
7 which is joint exhibit number 30, to the extent that it doesn't
8 say in words of one syllable that the plan investors can walk
9 away one day before the effective date, is there any material
10 here that you think the Board could put together to extrapolate
11 that understanding?

12 A. I think that you premise is that they can terminate the
13 plan support agreement and hence be able to terminate the EPCA.
14 And since there's not a discussion about the plan support
15 agreement in these pages 4 and 5.

16 Q. As far as I could see there was no separate summary of the
17 plan support agreement provided to the directors, correct?

18 A. The plan support agreement was provided to the directors.

19 Q. The plan support agreement itself, but no summary thereof,
20 correct?

21 A. Not a summary, the document itself.

22 Q. Okay. So let's just look at the chart together, the
23 before chart? And the before chart is before yesterday when
24 the debtor made certain adjustments to the agreement support,
25 just so you know what I'm trying to depict. Now, when we get

1 to the effective date, Mr. Sheehan, what has already occurred
2 to your understanding? There's been settlement agreements with
3 labor and GM, correct?

4 A. Yes, ma'am.

5 Q. There's been a disclosure statement approved by the Court?

6 A. Yes, ma'am.

7 Q. It's not waived by the company and the plan investors,
8 there's been a rights offering?

9 A. That's correct.

10 Q. And, there's been a confirmation hearing?

11 A. Yes, I believe that's correct.

12 Q. And then there's a period between the confirmation hearing
13 the effective date, right?

14 A. I believe that's correct.

15 Q. And both the plan support agreement, if all the
16 transactions move forward as contemplated, both the plan
17 support agreement and the EPCA terminate on the effective date,
18 right?

19 A. I believe that's correct.

20 Q. And the effective date is the date when the plan investors
21 take down all the rights that hadn't been exercised, right?

22 A. That's correct.

23 Q. They file up all the converted preferred, right?

24 A. I believe that's correct.

25 Q. And at that moment, the agreements cease to exist,

1 correct?

2 A. I believe that's correct.

3 Q. And is it your understanding that even before the plan
4 investors could sit at the end of confirmation and wait to the
5 effective date and look around and say what's this company
6 trading, is it fifty, is it twenty and should I exercise my
7 right to terminate? Is that what they were able to do before?

8 A. It may have been, yes.

9 Q. Okay. Did anyone describe that to the Board while in your
10 presence?

11 A. No. I don't believe they did.

12 Q. Okay. Now, let's look at after. We're talking about,
13 again, plan investors right to terminate. Okay. We're talking
14 about a unilateral right to terminate. That hasn't been
15 eliminated from the agreements has it?

16 A. From the perspective that the plan investors would have
17 the right to terminate the agreement if its not effective by
18 the later of June 30th or a 180 days after due diligence
19 expires.

20 Q. They could terminate the EPCA, right?

21 A. That's correct.

22 Q. Right. But they still had the right to terminate the plan
23 support agreement and the EPCA for any reason or notice?

24 A. After April 1st of 2007, they have the right to terminate
25 the plan support agreement.

1 Q. And then they have the unilateral right to terminate the
2 EPCA, right?

3 A. I guess I'm not totally sure about that subject.

4 MR. BUTLER: Your Honor, I haven't objected to this
5 line of question, it's sort of like a pop quiz. It would be
6 helpful if counsel would point to the documents, they do speak
7 for themselves. And, you know, Mr. Sheehan can then be
8 questioned about what they say.

9 THE COURT: Well, I guess that's how I would like to
10 go with this. I understand that you want to question him as to
11 what the Board was informed and what the company understood,
12 but I think rather than quizzing him about what the documents
13 say, it's best to point to the section of the document and say
14 you understand what this means and was the Board informed of
15 this.

16 MS. STEINGART: Well, Your Honor, there are two
17 issues here. Okay. It's not only was the Board informed. The
18 Board can only be informed of something that the witness
19 understands enough to think is important, understands enough to
20 tell the Board about. And these agreements -- this provision
21 it's one of the three big changes that were made to these
22 agreements between Wednesday and today. And I could ask a
23 further question to help put this witness in --

24 THE COURT: Again, and this goes back to the chambers
25 conference we had on these evidentiary issues, ultimately,

1 notwithstanding the Court's application of the business
2 judgment rule, I have to approve the agreements. And its more
3 helpful to me to just have the agreements in front of me. And
4 if there's an ambiguity, certainly, that can be dealt with.
5 And to the extent that the company disagrees with me and
6 really, truly wants me just to defer to the Board's judgment
7 then I should know what the Board considered. But there's an
8 intermediate step there, I guess, which is quizzing Mr.
9 Sheehan. I guess I'd like to skip over that.

10 MR. STEINGART: Okay. Well, let me see if I could
11 put the witness a little more in the picture then.

12 THE COURT: Okay.

13 Q. Mr. Sheehan, were you involved in the discussions that led
14 to the amendment to the agreement that were provided to the
15 Court yesterday?

16 A. I was one person that was involved, yes.

17 Q. Well, you said before you were one of the lead
18 negotiators, right?

19 A. Over the course of the entire process, yes.

20 Q. And over the course of the process that occurred in the
21 past week, that led to the changes before the Court, you were
22 involved in that too, right?

23 A. To a certain extent, yes.

24 Q. And were you involved in the part of the process where
25 people talked about making more limited the right to terminate,

1 that we talked about before?

2 A. Yes. I was aware that we sought to make sure that the
3 agreement limited those provisions.

4 Q. And were you involved in those discussions?

5 A. I guess I'd ask you to be more specific as to what you
6 mean by those discussions?

7 Q. Were you involved in the discussions that led to the
8 change in the agreements that limited the right of the plan
9 investors to terminate unilaterally?

10 A. I was not involved in discussions with the plan investors
11 on the subject. I was involved in discussions with the debtors
12 and with our counsel on the subject. And those counsel then,
13 who drafted the agreements, made the changes.

14 Q. Okay. So the negotiations for the changes that were made
15 just in the past couple of days, those were engaged in
16 primarily by counsel and not by management?

17 A. Over the last several days that was principally between
18 the law firms, yes.

19 Q. Okay, fair enough. Okay. Why don't we look at Section 12
20 of the EPCA, which begins on page 59?

21 A. Can you tell me what exhibit it is?

22 Q. Oh, yes. I thought we had, I'm sorry. I apologize.
23 Exhibit 2.

24 A. Section 12 of the EPCA?

25 MR. BUTLER: I'm sorry. Exhibit 2 is the original

1 EPCA, I believe, isn't it. Or is it the amended EPCA?

2 MS. STEINGART: It doesn't matter which one he looks
3 at, this hasn't changed. If you'd rather he look at the
4 amended --

5 THE COURT: No. Section 12 is changed.

6 MS. STEINGART: I'm sorry?

7 THE COURT: Section 12 was definitely changed. I'm
8 working off what was attached to the debtor's response. I
9 actually had a question as to whether that document is actually
10 in the exhibit book at this point. I'm assuming it is but I
11 haven't gone and looked for it.

12 MS. STEINGART: I have to say it's not an exhibit
13 that I designated.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, it's Exhibit number 61, I
16 believe.

17 THE COURT: Okay. Yeah, that's right. That's it. I
18 mean, I already marked up what you gave me in the response, so
19 I didn't look at it in the book.

20 MS. STEINGART: It's the black line, I think, still
21 page 59.

22 THE COURT: It's an exhibit to the response.

23 Q. Okay. And I direct your attention just so I can try to
24 shortcut it because it is long, to 12(c) to (i). Which in
25 essence says "this agreement may be terminated and the

1 transactions contemplated here by may be abandoned at any time
2 prior to the closing date by any party to this agreement." And
3 then we go down to (ii) "if the PSA shall have been terminated
4 in accordance with its terms." That's still in there, right?

5 A. Yes, ma'am.

6 Q. Okay. So isn't it still the case that the plan investors
7 can, for any reason or no reason, after April 1st terminate the
8 PSA and then with impunity terminate the EPCA?

9 A. I believe that's correct at that point in time that
10 certain fees that if they had been paid to the plan investors
11 would be refunded to the company, repaid to the company by the
12 investors no later than the close of business or the next
13 business day following the date of such termination.

14 Q. But we're not talking about the assuming, just talking
15 about the right to terminate, correct?

16 A. That's correct.

17 Q. Now when we were doing the before, and we can go back to
18 that, because, you know, the fee was resolved and I didn't want
19 to do that, but we can talk about that if you'd like. Because
20 in the before they got to get all their fees until the date
21 before the effective date and they could terminate this
22 agreement and the other agreement because it's marketed to them
23 and they got to keep like, 100 million dollars?

24 MR. BUTLER: Objection. Counsel's testifying at this
25 point.

1 MS. STEINGART: This is what --

2 THE COURT: I'll overrule the objection.

3 Q. Wasn't that so?

4 A. They, without regard to the exact number, yes.

5 Q. Okay. And after what we did -- or what you do -- what the
6 debtor did is the debtor eliminated that retention of the fees
7 if the plan investors first terminate the PSA and then
8 terminate the EPCA, if they've gotten commitment fees they have
9 to give them back, right?

10 A. Yes, ma'am.

11 Q. But not expenses, no? They get to keep the expenses?

12 A. I believe that's correct.

13 Q. And the expenses, about 100 million dollars, were not
14 assigned a million dollars either, right?

15 A. Probably won't be but I haven't --

16 Q. Well, they will get 13 million as soon as the Court
17 approves this agreement?

18 A. That's correct.

19 Q. That's right. And then they get, without cap, paying for
20 all of their reasonable advisor expenses?

21 A. Yes, ma'am.

22 Q. And they have lots of advisors, don't they?

23 A. Everybody in this case does.

24 Q. And there's more than one investor that you're paying this
25 for, right? More than one investor that you're paying those

1 kinds of uncapped expenses for, right?

2 A. There is the plan investors under the investment
3 agreements.

4 Q. So there are three of them?

5 A. I think there's five.

6 Q. Oh, there are five. So they keep the thirteen and the
7 keep whatever over time paid their monthly fees from December
8 to whenever they terminate, am I correct?

9 A. I believe that's correct.

10 Q. But putting the fees aside my focus is really on their
11 continuing ability to terminate even in the after picture. So
12 in the after picture you would agree with me that they could
13 terminate from April 1st until the approval of the disclosure
14 statement, correct?

15 A. Yes, ma'am.

16 Q. And the words are important, they could terminate for any
17 reason or no reason, right?

18 A. Under the PSA.

19 Q. Under the PSA, right. And then once the PSA is terminated
20 for any reason or no reason, they can terminate the EPCA,
21 correct?

22 A. I believe that's correct.

23 Q. And isn't it correct that -- and the debtor has the same
24 rights, doesn't it? The debtor as the right, under the PSA to
25 terminate in that escape hatch period we've just given in?

1 Under the PSA the debtor has the right, correct?

2 A. That is correct.

3 Q. But the debtor does not have the right to terminate the
4 EPCA after it's terminated the PSA?

5 A. That is correct.

6 Q. Okay. So the plan investors, in determining both the
7 impunity or in this stage, escape hatch period, but not the
8 company, right?

9 A. That's correct.

10 Q. Okay. And GM -- let's get to GM just for a moment here.
11 GM also, during this escape hatch period, can terminate the
12 plan support agreement, right?

13 A. I believe that's correct.

14 Q. But if GM terminates the plan support agreement, the
15 company may not terminate the EPCA?

16 A. That is correct.

17 Q. So the plan investors have a few more options than the
18 company does, don't they?

19 A. The provisions with respect to the company and the plan
20 investors are different.

21 Q. Okay. And this is all before the plan investors have to
22 put up any money at all, right?

23 A. They have not funded anything at that period of time,
24 that's correct.

25 Q. And they had the option to walk away without fund paying,

1 correct?

2 A. As you've described it.

3 Q. And you testified that when someone has the ability to
4 walk away for any reason or no reason, they haven't really made
5 a commitment, right? Haven't you said that?

6 A. I understand your point.

7 Q. I'm sorry?

8 A. Yes, ma'am.

9 MS. STEINGART: I think we could put the agreement
10 away for a moment.

11 Q. Now I'm going to go back to the alternative transaction
12 fee. The alternative transaction fee has a tail, right? A
13 period on the continued use and existence?

14 A. Yes, it does.

15 Q. And could you describe what the tail is?

16 A. I believe it's twenty-four months.

17 Q. When you were evaluating this and telling the Board about
18 it, did you look at any other transaction that had a tail of
19 twenty-four months?

20 A. I did not personally, no.

21 Q. And did any of your advisors tell you that there were
22 transactions that had twenty-four month tails?

23 A. I don't recall specifically asking them that question.

24 Q. And no one said gee this is a really long time?

25 A. I think that we sought to negotiate the agreement and each

1 individual provision, and as it related to that period of time
2 that was the best we could do.

3 Q. Okay. Well, you were the lead negotiator, tell me about
4 the negotiation on the twenty-four months? They said twenty-
5 four months and what did you say?

6 A. We originally sought for it to be six months. It was an
7 area that there was not latitude on their parts and it's not
8 one that was changed.

9 Q. So they said twenty-four, you said six and they said
10 twenty-four, and that was the end of it?

11 A. At the end of the day we recognized that this company
12 would be executing an alternative transaction in order to be
13 able to emerge from Chapter 11, an alternative transaction
14 would need to take place. So it was not a position that we
15 felt that was going to materially affect the outcome in any
16 event.

17 Q. So having an obligation to pay it for a longer period of
18 time was not a concern to you?

19 A. What was of concern to us was to negotiate an agreement as
20 a whole for the best -- in the best interest of all the
21 constituencies and we sought on every provision, and there were
22 some that we felt more strongly about than others.

23 Q. Okay. What was it that led you to -- we're talking about
24 negotiating of provision, what was that led you to arrive to
25 the investors to walk away here, what led you to do that?

1 MR. BUTLER: Objection. Just for the record, what
2 does here mean?

3 MS. STEINGART: The date before the effective date.

4 A. I think that the agreements as they were drafted reflected
5 the -- I think the agreements as they reflected provided a --
6 perhaps an opportunity that -- as this process has evolved
7 provided a right that perhaps was unintended and over the last
8 week in order to be able to provide a deterrent to the right
9 being exercised, the changes that you see made to the EPCA were
10 made.

11 Q. And what was the negotiation that led to the difference in
12 the termination of rights that we discussed that the plan
13 investors can terminate both of those with impunity but the
14 company could not. What led to that?

15 A. What led to that was discussions between representatives
16 of the debtors and representatives of the plan investors.

17 Q. And you didn't say then when you get to twenty-four months
18 you need this too?

19 A. I'm not aware that the twenty-four month so-called tail
20 was a point discussed over the last days.

21 Q. Well, did you say to them I'm giving you -- I'm still
22 giving you this hash period? Why can't we have mutual
23 termination rights? You could go out in the hash period, why
24 can't the company go out. But that didn't change, right? Or
25 that actually did change, didn't it? When you revised the

1 agreements the hash period got more restricted for the company,
2 didn't it?

3 A. The changes that are reflected in Section 5(c) of the EPCA
4 were made and they provide for changes both for the company's
5 obligations or rights as well as the plan investors.

6 Q. So in the after provision we have now the has period of
7 April 1st until this disclosure statement, right? April first
8 until the disclosure statement as the has period, right?

9 A. As set forth in the EPCA with the provisions that are in
10 the EPCA, yes.

11 Q. That's the current agreement?

12 A. The one that we were looking at a moment ago.

13 Q. Right.

14 A. Uh-huh.

15 Q. Now, by this time, this hash period comes into play after
16 you have labor agreements and GM settlement, right?

17 A. That would be correct.

18 Q. Okay. And did you know that Mr. Miller testified that
19 when it comes to the value of the company on in merges, the
20 most important factor are settlement of labor and GM?

21 A. I haven't read Mr. Miller's testimony, deposition?

22 Q. If he, in fact said that, would you agree with him?

23 A. The settlements with labor and General Motors are critical
24 for this company to emerge from Chapter 11 and will play a very
25 big part in the value creation process.

1 Q. So here the plan investors get to look and see what the
2 value is of the company and whether they really want to back
3 convertible preferred, whether they really want those rights,
4 whether these agreements had been good enough. And they could
5 exercise their right to walk, correct?

6 A. That's correct.

7 Q. And as we said before, to the extent they had that there
8 is no commitment, right?

9 A. The plan investors have the rights that set forth in the
10 agreement to be able to terminate.

11 Q. Right. And there's no commitment while they could do that
12 for any reason or no reason? Right, we agreed about that
13 before, right?

14 A. Yes, ma'am.

15 Q. Okay. Let's talk about value. Let's talk about what kind
16 of value the plan investors are getting in addition to their
17 rights to terminate. They're getting commitment fees, right?

18 A. Yes, ma'am.

19 Q. And the Judge doesn't want us to make this a testimony, so
20 let me give you a chart, okay. I have a chart on both
21 handouts.

22 MR. BUTLER: I thought you already produced all your
23 demonstratives?

24 MS. STEINGART: I'm sorry, it's just an addition.

25 THE COURT: No. But you were supposed to give --

1 MS. STEINGART: Was I supposed to give them all then?

2 THE COURT: Yes.

3 MS. STEINGART: I'm sorry, Your Honor. I was caught
4 up in my examination.

5 THE COURT: Well, maybe they did. Did you give them?

6 MR. BUTLER: No. We have not seen this, Your Honor.

7 THE COURT: Well, let's take a couple of minutes to
8 look at it before you go forward.

9 MS. STEINGART: You will receive demonstratives that
10 I won't use during this examination, I ask that you not to
11 reveal them to the other witnesses.

12 MR. BUTLER: Oh, that's fine.

13 MS. STEINGART: Thank you.

14 MR. BUTLER: So are there any other demonstratives
15 for the record, any other demonstratives beyond this one.

16 MS. STEINGART: There's one more, I'm going to get to
17 it.

18 MR. BUTLER: Okay.

19 MS. STEINGART: Now, we're all done with
20 demonstratives, Your Honor, it won't come up again.

21 MR. BUTLER: Do you have more of the one chart? I
22 just need more of the other chart.

23 MS. STEINGART: Sure. Make sure the witness gets
24 one.

25 Q. All right. So let's see if we can talk about value to

1 plan investors. Okay. Let's start with the easy stuff. We've
2 talked about these expenses already, but we can recap them
3 briefly. And this is value transfer to investors to the extent
4 that they don't exercise unilateral rights they have once they
5 look at the economics and walk away. Okay. So this is if the
6 deal actually gets done. So we've already talked about the
7 thirteen million immediately upon approval, correct?

8 A. Yes, ma'am.

9 Q. And there's and additional five that Appaloosa gets on the
10 effective date, right?

11 A. That's correct.

12 Q. And we have an estimate for these uncapped fees. And I
13 didn't realize they were five, but I'll stay with my estimate
14 of five to ten. Do you think that's a fair estimate, Mr.
15 Sheehan, a low estimate?

16 A. I have no opinion on that subject. I'll just take your
17 estimate.

18 Q. Okay. If between now and the effective date all five plan
19 investors had expenses of ten million would you be glad?

20 A. I could make a joke at the current time but I'll say yes.

21 Q. Okay. And then we have the commitment fees, and the
22 commitment fees are the commitment fees for the rights offering
23 convertible preferred, correct?

24 A. Yes, ma'am.

25 Q. And that's seventy-six million dollars?

1 A. That's correct.

2 Q. And then we have the rights offering itself, where the
3 debtors get allocated to them 6.3 million shares, right?

4 THE COURT: You mean the investors.

5 MS. STEINGART: The investors that --

6 THE COURT: You said the debtors. The investors.

7 MS. STEINGART: Oh, I'm sorry, the plan investors.

8 Thank you, Your Honor.

9 Q. Have allocated to them 6.3 million shares, correct?

10 A. That's correct.

11 Q. And plan value of the stock is forty-five dollars, right?

12 A. That is the expected plan value.

13 Q. And their exercise price is thirty-five?

14 A. That's correct.

15 Q. And so the value of allocating to them for their own use,
16 6.3 million shares, is sixty-three million dollars, correct?

17 A. That's correct.

18 Q. And let's look at the convertible preferred. Now the
19 convertible preferred they get thirty-four million and change
20 for that, right? Thirty-four million shares?

21 A. Yes, ma'am.

22 Q. And with respect to the convertible preferred their
23 exercise price is also ten dollars below plan value, right?

24 A. That is correct.

25 Q. And if you multiply the ten dollars by the shares that

1 gives them value of 343 million dollars, right?

2 A. Mathematically, that's correct.

3 Q. And isn't it true it's unusual for convertible preferred
4 to be offered at a discount?

5 A. I think that this is a unique transaction and I'm not sure
6 that there are comparable transactions to be able to compare it
7 to.

8 Q. Didn't Mr. Resnick tell you that he was not aware of even
9 one transaction where a convertible preferred was offered at a
10 discount to the common into which it would convert?

11 A. I didn't ask Mr. Resnick that question.

12 Q. Nobody asked Mr. Resnick whether the discount pricing on
13 the convertible preferred was at all the way the market treated
14 these kinds of securities?

15 A. I think that the discussion surrounded that this is a very
16 unique transaction that the thirty-five dollar per share
17 conversion price is equivalent to that which the rights
18 offering for both the plan investors and our current
19 shareholders is taking place. And that was the basis for that
20 amount.

21 Q. And Mr. Resnick didn't say I'm your financial advisor, you
22 should know. Did he say that to you? You should know that I'm
23 not aware of any convertible preferred in the market place for
24 a public company that's offered at a discount to those security
25 it converts into. He didn't tell you that?

1 A. I don't recall him saying that to me.

2 Q. Now what price did the plan investor say they wanted to
3 have as their discount out of the box? When they were
4 negotiating what was the offer they first put on the table?

5 A. The thirty-five dollars per share is what their price was,
6 what their proposal was.

7 Q. And what did you say back, we want forty-five?

8 A. We looked at the transaction as a whole and the fact that
9 the rights offering was taking place both, for the plan
10 investors and for our total shareholder base. And recognized
11 that the transaction would provide the company, the debtors,
12 with the requisite capital it needed to be able to effect its
13 transformation and emergency from Chapter 11.

14 Q. So you're saying that they said thirty-five and you said
15 okay?

16 A. We looked at the transaction as a whole as it was proposed
17 and we discussed that transaction, we negotiated that
18 transaction and the thirty-five was not an amount that was
19 changed from the original proposal.

20 Q. Now were you giving them thirty-five when you agreed to
21 this because you thought there would be a lot of risks along
22 the way. And that, you know, therefore, they should be
23 discount because who knows what the stock would be by the time
24 of the effective date, so you gave them the discount, is that
25 why?

1 A. The convertible preferred stock will not be converted or
2 will not be realized in value in cash to the plan investors
3 until such time as it is both converted into common stock and
4 sold. And, quite honestly, that will not be on the effective
5 date.

6 Q. Okay. So you gave them a discount because you were
7 concerned or accepted their idea that there was some risk
8 associated with the convertible preferred?

9 A. The transaction contemplates that all of the shares that
10 are issued to the shareholders, including the plan investors,
11 is issued at thirty-five dollars per share or convertible at
12 thirty-five dollars a share. It's the same price both, for the
13 plan investors as well as the common shareholders of the
14 company.

15 Q. Right. I know that you keep saying that but you're making
16 a distribution to common shareholders on account of the fact
17 that they're stakeholders, right?

18 A. We're giving them the opportunity to invest in the company
19 at thirty-five dollars per share, it's not a distribution.

20 Q. Right. But on account of the fact that their stakeholders
21 of the company, right?

22 A. That's correct.

23 Q. And, you're giving it to the plan investors because it's
24 part of the deal, correct?

25 A. That's correct.

1 Q. And it's value, it has a value, right?

2 A. It may be value to them in the future if the share price
3 of the company stays above thirty-five dollars per share. Only
4 time will tell.

5 Q. As you sit here today, do you seriously contend that at
6 the time this company goes effective that the convertible
7 preferred are going to be worth less then the common?

8 A. That's not what I said.

9 Q. So they're getting a discount on the convertible preferred
10 that has value, right?

11 A. Ask your question again, please?

12 Q. I said you're giving them a discount on the convertible
13 preferred that has value, correct?

14 A. We are entering into a transaction to provide them the
15 right to convert their convertible preferred stock into common
16 stock at thirty-five dollars per share at some point in the
17 future.

18 Q. Right. And until that time, they get preferential
19 treatment as holders of the convertible preferred, don't they?

20 A. They have certain corporate governance rights, that's
21 correct.

22 Q. And don't they have certain rights to other payments?

23 A. They receive a dividend of the 3.25 percent, that's
24 correct.

25 Q. Right. And they receive other protections in connection

1 with the convertible preferred, don't they?

2 A. They do.

3 Q. And that's why usually convertible preferred, even when
4 they're convertible to common, trade at a premium, right?

5 A. I think that this is a unique transaction with an overall
6 level of investment and proposal by the plan investors and I'm
7 not -- I can't say whether it is a -- is comparable to other
8 transactions.

9 Q. So the value -- if we look at the ten dollar discount, and
10 you have a good faith belief that stock is going to be forty-
11 five, don't you? I mean, you're giving it to your unsecured,
12 right, at that value, right?

13 A. That's correct.

14 Q. Okay. You have a good faith belief that on emergence it
15 will be forty-five dollars, right?

16 A. That's the value that's set forth in the EPCA.

17 Q. Okay. So in order to understand the value that the
18 agreements give the investors we have to multiply the shares by
19 ten dollars, and we get 350 million, right?

20 A. That's a mathematically correct answer.

21 Q. Okay. Now did anyone provide the summary chart like this
22 so that the Board could see in one place what the total implied
23 value of this transaction was to the plan investors?

24 A. A chart such as that was not provided to the Board of
25 directors, no.

1 Q. And is there anything in the summary, that you see before
2 you that we referenced before --

3 MS. STEINGART: I'm really bad with exhibit numbers,
4 Your Honor, I'm really sorry. What was the summary? 30.

5 Q. Is there anything that's in Exhibit 30 that would give,
6 when the Board was reviewing this on December 11 so that it
7 could approve, bring the agreements to Judge Drain? Is there
8 anywhere there, you know, anything that you could imply or add
9 together from there that would help you get to this?

10 A. The provisions of the EPCA are set forth and so the amount
11 of the shares, the thirty-five dollar price, are included. So,
12 you know, I think the same calculations that you did from the
13 EPCA can be done.

14 Q. And was that discussed during the December 11 meeting?

15 A. The provisions of the agreement were reviewed, yes.

16 Q. You went through the summary, right?

17 A. Yes, ma'am.

18 Q. And is the description of value going to the plan
19 investors in the commitment fee section?

20 A. There's not a chart such as that, that's correct.

21 Q. Did anyone talk about total value going to the investors,
22 in any way, during that phone conversation?

23 A. I think the transaction was described to the Board of
24 directors and including the discussions that had taken place
25 over a long period of time.

1 Q. Right. And as lead negotiator or as one of the lead
2 negotiators, you didn't even think about the transaction this
3 way, did you?

4 A. I don't think that's true.

5 Q. Did you add up in your mind every time the plan investors
6 asked for something, how it was increasing the value?

7 A. I understand that each of those expense categories will be
8 provided to the plan investors. I understand the amount of the
9 commitment fees that will be paid. I understand the discount
10 on the director subscription shares. And I understand that the
11 plan investors will hold a convertible preferred stock that
12 will be convertible at thirty-five dollars a share at some
13 point in the future into approximately thirty-four million
14 shares of the company. The ability of the plan investors to
15 realize the discount on the convertible preferred stock in the
16 future is subject to the market in the future, the company's
17 performance, and in addition to that, the ability to dispose of
18 such a large lock of the company's common stock at the trading
19 price at that time.

20 Q. But they really wanted this convertible preferred, didn't
21 they? Like, you didn't have to beg them to take it, did you?

22 A. It was a provision of the transaction.

23 Q. And did you sort of compartmentalize this so that you
24 didn't, in your own mind ever say it could be worth X amount to
25 these guys?

1 A. I'm not sure I understand the question.

2 Q. Well, I'm trying to understand whether the Board
3 appreciated that the level of value, by doing the arithmetic,
4 where there's a good faith believe in the forty-five dollar
5 number is what we see on the street? So did anyone give that
6 overall summary to the Board? Did anyone say he could go as
7 far as 500 million?

8 A. I remember somebody telling the Board that money and
9 adding all those numbers together, I think I've testified to
10 that.

11 Q. Right. And as to the convertible preferred, you don't
12 seriously believe it's going to be worthless in forty-five, do
13 you?

14 A. I don't -- I can't predict what the future will be. I
15 believe this customer, after the emergence from Chapter 11, and
16 has transformed itself will perform. What the market will do
17 depends on a lot of other things.

18 Q. Well, isn't there even a risk with this convertible
19 preferred, and it has so many characteristics of debt that it's
20 so protected, that it might be regarded by rating agencies as
21 debt rather than equity?

22 A. I don't believe that our financial advisors believe that?

23 Q. Sorry?

24 A. I don't believe that our financial advisors believe that.

25 Q. But you haven't gotten that determination yet, have you?

1 From the rating agencies, have you gotten that determination
2 yet?

3 A. We have not had a determination from the rating agencies,
4 no.

5 Q. And being a sophisticated financial person, you know that
6 there are number of convertible preferreds in the market place
7 that are regarded as debt, right?

8 A. Those convertible preferreds I don't believe would have
9 the pure transfer into equity at all times that this one does.
10 There's no provision for a mandatory deduction.

11 Q. So this has more ability to transfer into equity if the
12 equity is traded sixty dollars a share than other convertible
13 preferreds?

14 A. My point is it has no mandatory redemption date, it has no
15 redemption date whatsoever. It can only be converted into
16 common stock.

17 Q. Right. And if the common stock is trading at sixty that's
18 a pretty play, right?

19 A. If it's trading at sixty that's a good play, yep.

20 Q. Let's look at the rights offer. It was the plan
21 investors, not Delphi, who insisted that the rights offering be
22 conducted pre-confirmation rather than post-confirmation,
23 right?

24 A. That was a requirement of the plan investors, that's
25 correct, for the transaction.

1 Q. They say I want a pre-confirmation, you said I want a
2 different timing and they said no. And that was the
3 negotiation, right?

4 A. I think there was a significant amount of negotiation and
5 discussion that took place between the equity committee and the
6 plan investors as they sought to reach a common ground on what
7 the consideration to our common shareholders in conjunction --
8 distribution to our common shareholders in conjunction with
9 this resolution of this Chapter 11 case would be. The plan
10 investors were unwilling to cede that request of the -- cede to
11 the request of the equity committee. We sought subsequently to
12 -- subsequent to the equity committee not being successful, we
13 also sought and were unsuccessful on obtaining that right or
14 that change in the timing of the rights offering.

15 Q. It's not the fee committee it's the debtors as well who
16 are fiduciaries to stakeholders, right?

17 A. I'm a fiduciary at the estate as a fiduciary to all of our
18 stakeholders, that's correct.

19 Q. And you said during your deposition that the debtors told
20 the plan investors they wanted the rights offering at a
21 different time, right?

22 A. We sought to get that provision changed, that's correct.

23 Q. And the plan investors said no, right?

24 A. That's correct.

25 Q. And that's the way it is today, correct?

1 A. Yes, ma'am.

2 Q. And you know that if the rights offering takes place pre-
3 confirmation, that it's going to be worthless in the hands of
4 equity holders, right?

5 A. that's a true statement.

6 Q. And the rights offering occurring pre-confirmation will be
7 more complicated. So your less sophisticated equity holders
8 will have a harder time accessing those rights, won't they?

9 A. I think that changes were made to the rights offering to
10 allow the rights to be transferable, allowing our existing
11 common shareholders to -- increasing the ability and likelihood
12 of our existing common shareholders to receive value from the
13 rights. And as to the difficulty of realizing the value,
14 whether it's immediately after the disclosure statement is
15 approved or at a later point in time, I'm not sure I know.

16 Q. Well, let's talk about that a little bit. All right?

17 Because if we have the rights offering pre-confirmation, if the
18 rights offering expires pre-confirmation, people have to mail
19 their money in and put their money in escrow and wait and see
20 if the plan is confirmed in order for them to know if the
21 rights are going to be distributed to them, right?

22 A. In the event that the transaction didn't close, yes.

23 Q. That means that the transaction didn't close, or maybe
24 you're right, let's see. In order to exercise the rights --

25 A. Uh-huh.

1 Q. -- if the rights are offered, the ability to exercise the
2 rights as far as pre-confirmation, people have to mail in their
3 funds and their funds have to sit in escrow?

4 A. That's true.

5 Q. Because there's not rights offering unless the plan is
6 confirmed?

7 A. That's correct.

8 Q. All right. And that's more complicated than having a
9 confirmation and people knowing that they could have their
10 rights and just sending in the check, right?

11 A. I suppose.

12 Q. Now in your first day papers you said this company had an
13 excess of 300 thousand shareholders, right?

14 A. Yes, ma'am.

15 Q. And a lot of these people are less sophisticated than your
16 plan investors and maybe some of my committee members, right?

17 A. I don't know who all our shareholders are so I wouldn't
18 want to judge their financial.

19 Q. But making it pre-confirmation not only makes it less
20 value but makes it a little harder for them, doesn't it?

21 A. Yes, ma'am.

22 Q. Okay. But the reason that you acquiesced is because the
23 plan investors said look, we're not going to make it post-
24 confirmation because it will cost us more. Isn't that what
25 they told you?

1 A. That isn't -- separate those two statements, if I could.

2 Q. Um-hmm.

3 A. It is a true statement that they told us they were not
4 going to acquiesce -- the reason that they were not going to
5 change their timing of the rights offering. The reason why we
6 chose to go forward with the agreements is because when we had
7 fully negotiated all of the terms and conditions, we believed
8 that it was in the best interest of the estates and all of our
9 constituencies to move forward and that to walk away from the
10 potential to sign up a plan investor, get agreements with the
11 unions and General Motors and to move this company out of
12 Chapter 11 was in the best interest of all of our
13 constituencies.

14 Q. Now, the plan investors told you that they wanted the
15 rights offering, pre-confirmation, because delaying it to a
16 later time had an economic cost to the plan investors, right?

17 A. That's their position.

18 Q. They told you it did, didn't they?

19 A. That's what I said.

20 Q. Do you disagree with them?

21 A. Quite honestly, I don't have a position on that matter. I
22 understand what they say and I also understand that they said
23 they were not going to acquiesce to the change and --

24 Q. Well, you have a -- couldn't you ask Rothschild? They say
25 they're saving money here. You're an investment banker, you

1 know about how much money can be saved by things like that.
2 Tell me how much they're saving. Did you say that to anybody
3 from Rothschild?

4 A. The -- I believe that the financial experts, financial
5 advisors, understand the position or the economic arguments
6 that the plan investors were making. But, as I said, I don't
7 think that this revolves around -- the question revolves around
8 whether there was an economic cost -- an economic cost to the
9 plan investors or not. That was their -- that's their reason.
10 We sought to get the change made. We were unable to do so and
11 left between the choice of not recommending or moving forward
12 or not supporting the transaction. Because of that individual
13 provision versus moving forward and providing a -- the surety
14 of a plan investor to get agreements with the labor unions and
15 General Motors, we believed it was in the best interest of the
16 estate to move forward.

17 Q. So the plan investors told you I want more and you said
18 yes, right? They said I want --

19 A. That's -- that's not what I said.

20 Q. -- more than this and you said, yes, and then you didn't
21 figure out how much more to tell the Board, did you?

22 A. That's not what I said.

23 Q. Okay. Well, if they said that they were getting value
24 from it, why didn't you figure it out and tell the Board they
25 were getting value from it?

1 MR. BUTLER: Objection. Value from what?

2 MS. STEINGART: From the rights offering occurring
3 pre-confirmation.

4 Q. They said we don't want it later because it's going to
5 cost us money. And if you're going to say, okay, I'm giving
6 you that, don't you want to know how much it costs to say,
7 okay, I'm giving you that? Give me some back. Give me
8 something. Or at least tell the Board and let the Board know
9 that the Board's giving them more. Now, did you tell the Board
10 that the rights offering could be waived?

11 A. I don't believe that we did that, no.

12 Q. And you understood that -- that under the EPCA, the rights
13 offering can be waived, didn't you?

14 A. I believe that the debtors and the plan investors
15 clarified in a statement to the Court that the rights offering
16 would go forward and would -- was part of the overall
17 transaction and, therefore, was not intended to be waived.

18 Q. Well, I understand what people's intent is between now and
19 the end of the day today. But the agreements permit the
20 company and the plan investors to waive the rights offering,
21 correct? You didn't take that out, did you?

22 A. We didn't make any changes. I believe we filed a
23 statement in response to a request for clarification by the
24 statutory -- by com -- by constituencies.

25 Q. All right. But I'm asking you, sir, what the agreements

1 say.

2 THE COURT: Well, let's clear this up. The statement
3 that was filed, is that incorporated into the agreement? Are
4 the parties bound by that statement? Where's counsel for the
5 debtor?

6 MR. BUTLER: Your Honor, the statement -- the debtors
7 are bound by the entirety of the omnibus response to the
8 ambiguities as they were filed. I believe the plan investors
9 will say so as well, as GM will say so. It was signed by all
10 three parties. Gentlemen? The document we all signed, we're
11 bound by the document?

12 UNIDENTIFIED SPEAKER: Yes. Yes, Your Honor.

13 MS. STEINGART: Well, I'm sorry.

14 THE COURT: Okay.

15 UNIDENTIFIED SPEAKER: The -- is bound by the
16 document.

17 Q. Sir, the statement of ambigui --

18 MS. STEINGART: Your Honor, the statement of
19 ambiguities does not negative the explicit --

20 THE COURT: Well, I think what -- let's be a little
21 clearer. The statement that I believe Mr. Sheehan was
22 referring to is that the confirmation will not go forward until
23 the rights offering has been completed.

24 MR. BUTLER: Your Honor, yes. And the statement also
25 says there was an alleged ambiguity. The disclosure statement

1 hearing process is tied to the rights offering going forward.
2 In fact, there's language in it that point to -- in the
3 statement of ambiguity points out to that a condition according
4 to the disclosure statement is the registration statement to be
5 effective. That they'll be run in tandem. That's the
6 requirement in Article, I believe it is 1 or 2 of the EPCA.
7 And that court case remained in the statement filed by -- in
8 the court.

9 MS. STEINGART: Your Honor, I agree with Mr. Butler.
10 There are conditions to closing in the EPCA. But the EPCA also
11 has a specific provision, specific provisions that give the
12 company and the plan investors the right to waive. It's in the
13 document and I would be remiss in my representation of the
14 constituency to leave that in a position where an agreement had
15 that explicit provision regardless of -- what will happen two
16 months from now, I really don't know, Your Honor. But the
17 agreement is unambiguous in that respect that 9(b) provides the
18 ability of the investors to waive that provision and 9(c)
19 specifically provides that provision for the company to waive.
20 And I'll leave it at that and move on.

21 THE COURT: But I -- well, I guess --

22 MR. BUTLER: Your Honor, I can be helpful. Your
23 Honor had said earlier that counsel should make references to
24 specific provisions. I'd like to know what specific
25 provision -- if she's just referring to the fact that there's a

1 boiler plate in the back of the document that says that any
2 part of this document can be waived by this agreement --

3 MS. STEINGART: No, Your Honor. No, Your Honor.

4 MR. BUTLER: I just want to know where it references.

5 MS. STEINGART: Well -- I'm sorry, Mr. Butler. 9(a),
6 and I will direct the witness to it, 9(a) has a list of
7 conditions to closing.

8 Q. Is that correct, Mr. Sheehan?

9 A. Section 9(a) of the EPCA --

10 MS. STEINGART: That's 9(a) of the EPCA, Your Honor.
11 And I don't have the blacklined. Unfortunately, I marked up
12 one agreement and it was too hard to start again, so I kept the
13 one I had. So I'm on page 48. And so 9(a) says conditions to
14 the obligation of the party. Okay? And it says -- and it
15 begins by saying subject to 9(b) and 9(b) says the plan
16 investors can waive anything in 9(a). All right? And so, a
17 condition to closing in 9(a), if we, you know, thumb through
18 it, is the rights offering at items 10 and 11. 9(b), which is
19 on page 53, Your Honor, says all or any of the conditions set
20 forth in 9(a) may be waived in whole or in part. 9(c) -- and
21 that's by the investors. In 9(c) -- deals with the obligations
22 or deals with the waiver rights of the company and if you go
23 through 9(c), it says the company can waive the rights
24 offering. You know, I have a constituency to protect, Your
25 Honor, and the statement that somehow people may not intend to

1 do something when the Court is being asked to approve an
2 agreement that has an explicit provision for them to do just
3 that, it's --

4 MR. BUTLER: It doesn't say that, Your Honor. I
5 mean, we can do this legal argument --

6 MS. STEINGART: All right. We'll do it later.

7 MR. BUTLER: But the fact is, that provision refers
8 to what occurs at closing. Closing occurs on the effective
9 date. Under the way this transaction is structured, you don't
10 even get to a disclosure statement hearing until the
11 registration statement is effective. And the rights offering
12 has to be completed by the time you get to the confirmation
13 hearing.

14 MS. STEINGART: You know, Your Honor --

15 MR. BUTLER: And the concept that somehow this can be
16 on the closing date when it's already been completed that it
17 can be waived, you know, which is just a standard boiler plate
18 section saying conditions can be waived at closing which is
19 what conditions say -- just like the conditions of the
20 effective date will have the right to have waivers in them.
21 You know, I --

22 MS. STEINGART: Well, Your Honor, you know, I don't
23 want to treat Mr. Butler like a country boy but people to
24 agreements have been known prior to the closing date when they
25 want to waive one of the conditions to waive them. They don't

1 wait. They waive them when they decide that -- and we'll get
2 to questions. Okay. We'll argue this later, Your Honor.
3 Excuse me.

4 THE COURT: I just don't see how it works without
5 doing it. It's how the investors get there -- I just don't see
6 how it works.

7 MS. STEINGART: Well, the investors then just buy up
8 all the rights, Your Honor.

9 THE COURT: But they're not rights, they're not
10 rights.

11 MS. STEINGART: Then they're shares because it's --

12 THE COURT: Then you have a stand alone plan.

13 MS. STEINGART: No -- that's right. Then they
14 become --

15 THE COURT: So it's not -- I just -- you can explain
16 it to me in oral argument but it doesn't make sense.

17 MS. STEINGART: Okay. Well, you -- okay. We'll deal
18 with that later.

19 Q. Okay. Now, the company has to file a registration
20 statement in connection with the rights if the rights go
21 forward, correct?

22 A. Yes, ma'am.

23 Q. And in that registration statement that the company will
24 be filing with the rights, it has to include financial
25 statements, correct?

1 A. Yes, ma'am.

2 Q. And at this time, the company has on file an 8K that
3 indicates that it may need to restate its financial statements,
4 right?

5 A. That is correct.

6 Q. And prior to any registration statement getting filed,
7 that situation is going to have to be resolved with the SEC, is
8 that fair?

9 A. That's a true statement.

10 Q. And it's only after that the registration statement can be
11 filed with the SEC, right?

12 A. That is correct, yes.

13 Q. And from that point on, it's a period of at least thirty
14 days before the registration statement can be effective, right?

15 A. Yes, ma'am.

16 Q. So to the extent that a registration statement is
17 necessary, it adds an element of uncertainty to the entire
18 transaction, doesn't it?

19 A. It is another matter that we need to deal with, that's
20 correct. And are dealing with.

21 Q. You know, the debtors haven't always been completely
22 transparent about what these agreements do?

23 MR. BUTLER: Objection, Your Honor. That's
24 testifying.

25 THE COURT: Sustained.

1 MS. STEINGART: Can we give the witness the expedited
2 motion for authority to enter into the agreements?

3 MR. BUTLER: I mean, it may be --

4 THE COURT: I sustained your objection.

5 Q. Sir, can I put before you what the debtors had filed as an
6 expedited motion for authority for an order authorizing the
7 equity purchase and commitment agreement by the Court? Do you
8 see that, sir?

9 A. A doc -- this -- that -- that's what this document that
10 was placed in front of me is. It's not from the exhibit book
11 so I presume -- I'll assume that it's correct.

12 Q. A motion filed with the Court.

13 A. Okay. Sorry. I'm just saying. I'm not --

14 THE COURT: You'll take her representation that it is
15 what it is?

16 MR. BUTLER: It's also Exhibit 59, Your Honor, for
17 the record.

18 THE WITNESS: Thanks. I wasn't trying to be
19 difficult.

20 Q. On page 19, sir, does the filing set forth the fees? I'm
21 sorry. The commitment -- excuse me, the commitments that are
22 being made by the plan investors under the framework
23 agreements?

24 A. Paragraph number again, please?

25 Q. Paragraph number 35 on page 19.

1 A. Paragraph 35 sets forth the individual components of the
2 securities of the company that the plan investors will purchase
3 or backstop in conjunction with the transformation plan or with
4 the investment.

5 Q. And is there anything in that paragraph that indicates
6 that that if the commitment doesn't occur until immediately
7 before the effective date?

8 A. This paragraph is only laying out the terms -- the -- the
9 securities that will be purchased and says that the EPCA sets
10 forth the terms and conditions upon which the plan investors
11 will purchase the three various types of -- or the three pieces
12 of its investment.

13 Q. And paragraph 37? Could you look at that with me on page
14 20?

15 THE COURT: This is -- you can put this out at oral
16 argument. This is silly.

17 MS. STEINGART: All right. Your Honor, I have no
18 further questions of this witness.

19 THE COURT: Okay. Okay. Go ahead.

20 CROSS EXAMINATION BY

21 MR. HAIL:

22 Q. Mr. Sheehan, I'm Brian Hail from Haynes and Boone
23 representing Highland Capital. I believe in this case you
24 submitted a declaration in support of the debtors' motion. Do
25 you recall that?

1 A. Yes, I did, sir.

2 Q. Okay. I believe it's adjoined to Exhibit 62 and if you
3 wouldn't mind turning to that? And it's specifically,
4 paragraph 26 of that and I'm going to focus on the first
5 sentence. The first sentence states "the debtors believe that
6 the proposed fees and expenses that they may pay under the
7 agreements are reasonable under the circumstances and a prudent
8 use of estate assets providing the benefits to the debtor as a
9 result of the agreement." Do you see that?

10 A. Yes, sir.

11 Q. Do you agree with that statement?

12 A. Yes, sir.

13 Q. Okay. When you were talking about the proposed fees and
14 expenses in this sentence, what fees and expenses were you
15 including?

16 A. In conjunction with the proposed transaction on the
17 investment agreements. The plan investors will receive
18 reimbursement of their legal and other advisory -- advisory
19 firm expenses. They will receive commitment fees for their
20 commitment to backstop the right's offering. Those are the
21 specific fees and expenses that they received in conjunction
22 with the transaction.

23 Q. Were you -- would you agree that there's other value given
24 to the plan investors in connection with the transaction?

25 A. Yes, sir.

1 Q. Okay. And I believe that the equity committee has the
2 chart here which lists certainly the reimbursements up here and
3 the commitment fees here. Is that right?

4 A. Yes, sir.

5 Q. So your statement in paragraph 26 is limited to
6 reasonableness, in your opinion, of these three -- of these
7 sets of pages, is that right?

8 A. That's correct.

9 Q. Did you -- well, do you have an opinion whether this is a
10 reasonable fee?

11 THE COURT: Just for the record, what are you --

12 MR. HAIL: Oh, just for the record, that is the
13 discount with the rights description feature that's provided
14 sixty-three million dollars based on a forty-five dollar -- the
15 thirty-five dollar rights price and a forty-five dollar stock
16 price.

17 MR. BUTLER: Objection. The foundation and
18 characterization is to it being a fee.

19 Q. Do you know this value transferred to the investors, do
20 you agree with that?

21 THE COURT: I'm sorry. You should restate the
22 question.

23 Q. All right. Ms. Steingart walked you through the value
24 that is given to the plan investors as involved their ability
25 to purchase 6.3 million shares of common stock at a thirty-five

1 dollar price, do you recall that?

2 A. I do.

3 Q. Okay. And I believe that you talked about a forty-five
4 dollar strength in stock price after emergency, do you remember
5 that?

6 A. Yes, sir.

7 Q. And that resulted in a ten dollar gain on those shares on
8 day 1, is that fair?

9 A. To the extent that those prices are realized, yes.

10 Q. Okay. And that frees a sixty-three million dollar gain on
11 day 1 for the plan investors, right?

12 A. On paper, yes.

13 Q. Okay. Do you think that's a reasonable fee or expense in
14 connection with this transaction?

15 A. I think that that is a part of the overall transaction.
16 It's a -- it was a -- the way the transaction was structured
17 and negotiated was that there would be a rights offering of
18 sixty-three million shares at thirty-five dollars a share with
19 ten percent of those shares, or 6.3 million shares, reserved
20 for the plan investors. We looked at the transaction as a
21 whole and the -- as I describe in my declaration, the
22 investment that was being made, the -- our belief that the plan
23 investors will provide the environment to be able to obtain
24 agreements with the unions and General Motors and, therefore,
25 allow the company -- the estates to emerge from Chapter 11 and

1 provide value to all of the constituencies to be in the best
2 interest of the estate.

3 Q. Did you specifically consider this 6.3 million dollars to
4 be reasonable?

5 THE COURT: I appreciate you came out for Ms.
6 Steingart, but I got this point.

7 MR. HAIL: Okay. Then let's be what it is. The next
8 point.

9 Q. This sixty-three million dollars is calculated assuming
10 forty-five post-emergence price, right?

11 A. That's -- it's the -- is forty-five minus thirty-five
12 times 6.3 million.

13 Q. If you turned to your declaration, paragraph 30, you state
14 that the frameworks agreements contemplate the value of
15 Delphi's common stock to be forty-five dollars per share at
16 emergence, do you see that?

17 A. Yes, sir.

18 Q. What did you mean when you said that? How did you come up
19 with the forty-five dollar per share value?

20 A. The forty-five dollar per share value is based upon the
21 plan investors expectation as to what the value of this -- of
22 the estate -- of -- of the -- of Delphi Corporation -- of the
23 enterprises and the number of shares that will be outstanding
24 in the reorganized Delphi.

25 Q. Did you do any calculations to determine whether or not

1 that forty-five dollar share prices would be accurate?

2 A. The company together with its financial advisors
3 considered the reasonableness of that -- that amount and
4 concluded that it was reasonable, yeah, based upon the number
5 of shares that would be outstanding.

6 Q. Have you heard from anyone that forty-five dollars per
7 share is low? In fact, that the expected share price at
8 emergence is higher?

9 A. Have I heard from anybody? I guess I'm aware that
10 Highland Capital has made representations as to what it
11 believes the value of Delphi would be.

12 Q. Are you aware that Highland Capital is calculated that the
13 current market -- well, not the current market -- on December
14 19th, the market implied that there would be a \$57.90 value for
15 each share of new Delphi's common stock at emergence?

16 A. I'm aware that that statement that was in, I believe,
17 their objection as well as the declaration of Pat Dougherty.

18 Q. Have you investigated that or explored that or talked
19 about that with anyone?

20 A. Yes, I have.

21 Q. And what have you done?

22 A. I've talked about it with my financial advisors,
23 Rothschild.

24 Q. And what did they tell you?

25 A. That -- that they understand that the calculation that was

1 done by Highland is based upon the public market price of the
2 stock and the terms of the framework agreements in terms of
3 number of shares that will be outstanding and so forth, and
4 whether or not the value is fifty -- it takes as a premise that
5 the market has all information including all of the non public
6 information that the plan investors and other proposed
7 investors in Delphi have or had in determining that forty-five
8 dollars per share was a -- based upon the number shares
9 expected to be issued was a reasonable price.

10 Q. If the share price at emergence had actually been \$57.90,
11 that increases the gain to the plan investors on two pieces of
12 this chart, isn't that right?

13 A. It increases the -- those two numbers and it increases
14 value for all of our constituencies.

15 Q. Well, putting aside the value to the constituents, let's
16 talk about the value to the plan investors. There's actually
17 twenty-two million dollars -- I'm sorry. The share price is
18 57.90. The discount that's being offered --

19 THE COURT: I can do the math.

20 Q. -- is \$23.90, isn't that right?

21 THE COURT: Let's move on on this. This is --

22 MR. HAIL: Okay.

23 Q. I think you testified earlier the summary that went to the
24 Board you could calculate the discount and the 343 million
25 dollar value to the investors, do you recall that?

1 A. I think that's what I said.

2 Q. All right. Would you take a look at Exhibit 30 again,
3 please? Is this the summary you were speaking of?

4 A. Yes, sir.

5 Q. If you take a look at the description on the first page,
6 it identifies 1.2 billion of preferred shares, do you see that?

7 A. Yes, sir.

8 Q. Does it discuss anywhere in there that the preferred stock
9 is convertible?

10 A. It's not specifically in this document. The -- I believe
11 you would find that it's set forth in the plan support
12 agreement.

13 Q. But this was a summary that was given to the Board, right?

14 A. Plus the entire plan support agreement. I apologize if I
15 misspoke earlier.

16 Q. Did you expect that the directors agree to the plan
17 support agreement to determine that it was convertible
18 preferred?

19 A. The plan support agreement actually was specifically
20 requested by the directors to be provided to them.

21 Q. Let me ask you another question. It doesn't mention that
22 it's convertible. Does it mention a strike price for the
23 conversion of the preferred shares?

24 A. You're speaking about the --

25 THE COURT: No, obviously.

1 MR. HAIL: Okay.

2 THE COURT: I'm going to be a little harder on you
3 because I realize there's a potential given that your client
4 has made this offer for a filibuster nature to this. I don't
5 sense you really are but I really want you to focus on things
6 that are not cumulative or obvious.

7 MR. HAIL: Okay.

8 Q. You testified earlier also that the value to the -- it's
9 not necessarily a value on day 1 to the convertible preferred
10 shareholders because the stock price might go up or down. And
11 it would only realize that value upon conversion. Is that
12 fair?

13 A. That's what I said.

14 Q. Okay. Are you familiar with convertible preferred stocks
15 or issuances?

16 A. Generally.

17 Q. Have you ever been involved in a transaction in which
18 there's been a convertible preferred issuance?

19 A. No, sir.

20 Q. Are you familiar with the way convertible preferred shares
21 trade?

22 A. Generally?

23 Q. Are you familiar with hedging strategies involving
24 convertible preferred stocks?

25 A. No, I'm not.

1 Q. Okay. Given that this preferred is in the money and you
2 can convert it at any time over seven years, isn't there option
3 value involved with this convertible preferred?

4 A. There may be. I'm not an expert in that area.

5 Q. Doesn't the convertible preferred also pay a coupon rate?

6 A. It pays 3.25 percent, that's correct.

7 Q. And what does that on an annual basis cost the company?

8 A. Approximately fifty million dollars.

9 Q. Was that pointed out to the Board at any point?

10 A. I believe it's set forth in the plan support agreement.

11 Q. Do you recall any discussion with the Board about that?
12 About the specific component of the coupon rate for the
13 convertible preferred?

14 A. I believe it was discussed with the Board. I can't tell
15 you specifically the date.

16 Q. Do you recall --

17 MR. HAIL: -- and, Al, this is where we might get
18 into the -- Your Honor, I want to talk about a document
19 involved that was presented to the Board and the debtors have
20 labeled it highly confidential. And I think it is --

21 THE COURT: What's the exhibit?

22 MR. HAIL: Just a second, let me get it for you.
23 It's Resnick Exhibit I which is -- I think it's 34. Let me --
24 yes. It's Exhibit 34.

25 Q. And specifically, I would like to focus your attention on

1 the page that is Delphi FL1954. Do you see that?

2 A. Yes, sir.

3 Q. Okay. This lists a series of execution risks associated
4 with the Highland proposal, do you see that?

5 A. Yes, I do.

6 Q. When was this document created, do you remember?

7 A. December 22nd, 2006.

8 Q. Okay. And this is a Rothschild presentation, isn't that
9 right?

10 A. It is a Rothschild document, that's correct.

11 Q. Okay. Did you participate in drafting this?

12 A. I reviewed a draft of it before it was distributed, yes.

13 Q. Okay. Now, these were the considerations that were true
14 on December 22nd, isn't that right? Or, in your opinion were
15 true on that day, is that fair.

16 MR. HAIL: Let me start the question over. I'll
17 withdraw the question.

18 Q. Were these the issues that you considered on December the
19 22nd, 2006.

20 A. These are -- these were -- these were and are execution
21 risks associated with the Highland proposal on December 22nd,
22 2006.

23 Q. Let's start with the first risk listed.

24 MR. HAIL: Are you guys okay with us?

25 MR. BUTLER: Yeah, I'm -- I mean, I'm okay at this

1 point that you can point to the risk and you don't have to
2 repeat it and ask him to comment on it. But I guess my
3 question is what the foundation is for this examination
4 relating to the motions? I mean, he didn't testify as to these
5 issues in his direct testimony, for example. I'm just trying
6 to figure out -- I mean, I'm not -- I'm just trying to
7 understand where you're going.

8 MR. HAIL: This witness is not going to testify at
9 all about the execution risks associated with the Highland
10 transaction.

11 THE COURT: I thought it was going to be Mr. Miller
12 on that one.

13 MR. BUTLER: Yeah. I mean, his testimony is what's
14 in his declaration.

15 THE COURT: The debtors are going to do a direct of
16 Mr. Miller on the --

17 MR. HAIL: This is from December, though, Your Honor.
18 This is not from the Board meeting yesterday.

19 MR. BUTLER: No. This was a -- I mean, again, this
20 is a presentation created by Rothschild on December 22nd and
21 sent to the Board. It was considered. There was no Board
22 meeting on December 22nd, as counsel knows. There was a Board
23 --

24 THE COURT: Well, let me ask it. Mr. Sheehan, in
25 your declaration, when you're commenting on the debtors'

1 decision to go ahead today with this hearing --

2 THE WITNESS: The framework agreements.

3 THE COURT: Did you include your consideration of
4 this document as part of your analysis?

5 MR. HAIL: Your Honor, I don't believe in his
6 declaration he indicates that they plan to go forward with this
7 hearing.

8 THE COURT: Oh, okay. I'm sorry. I'm looking at the
9 debtors' response. Did you consider this document in
10 connection with your declaration?

11 MR. BUTLER: I mean, Your Honor, he did describe it -
12 - what was occurred at the beginning of paragraph 32. There
13 was discussion. In his declaration, paragraphs 32 to -- I
14 think it's to approximately paragraph 42 describe factual
15 elements relating to the Highland -- consideration of the
16 Highland proposal.

17 MR. HAIL: And, Your Honor, where I'm going is I just
18 want to talk about the efforts that have been made to overcome
19 these execution risks since the time the document was created
20 and what Mr. Sheehan knows about that. What the company has
21 done or what the status of the -- of --

22 THE COURT: Okay. You can go ahead.

23 MR. HAIL: What's that?

24 THE COURT: You can go ahead.

25 MR. HAIL: Okay.

1 Q. The first one is that Highland had not contacted Delphi or
2 its advisors. Have you -- since December 22nd has Delphi met
3 with Highland to discuss its proposal?

4 A. Yes, we have.

5 Q. Okay. Is it fair to say that you have a dialogue with
6 Highland about its proposal?

7 A. We met on January 2nd, 2007 at the company's headquarters
8 in Troy and we have had discussions either between the company
9 and Highland or between Highland's legal advisors and Delphi's
10 legal advisors since that time.

11 Q. Okay. The next one, Highland's -- well, the next one,
12 addressing Mr. Butler's concern, skipping over the second one,
13 the third one is a timeline and level of commitment are
14 unclear. Do you see that?

15 A. Yes, sir.

16 Q. Has Highland subsequently provided a timeline for its
17 transaction to the debtors?

18 A. Yes, it has.

19 Q. Okay. Has it demonstrated its level of commitment to this
20 transaction to the debtors?

21 A. It has demon -- it certainly has demonstrated that it --
22 through coming and meeting with the company through its
23 involvement that it is -- it is seeking to execute the
24 transaction, yes.

25 Q. Skipping the one after that, but the next one, Highland's

1 financial ability to underwrite the deal, do you see that?

2 A. Yes, sir.

3 Q. Since this document was drafted on December 22nd, has the
4 company learned more about Highland's ability to underwrite a
5 4.2 or 4.7 billion dollar deal?

6 A. Yes, we have.

7 Q. And what have you learned?

8 A. Highland is a thirty -- represents and I believe they
9 do -- have thirty five billion dollars of assets under
10 management, that there are no restrictions among its -- under
11 its -- under the provisions in which it operates to -- that
12 would restrict it from investing such a large percentage of its
13 assets in one investment and that it would be able to move
14 the -- the necessary assets if they weren't sitting within one
15 investment vehicle into an investment vehicle in order to make
16 the transaction happen.

17 Q. The next one references a financial advisor. Do you know
18 if Highland has hired a financial advisor in connection with
19 this transaction?

20 A. It has hired a financial advisor in connection with the
21 transaction.

22 Q. The last bullet point references Highland's investment in
23 automotive companies. Do you know if now if Highland has
24 significant investments in automotive companies?

25 A. I don't believe they do, no.

1 Q. What's the basis of that knowledge?

2 A. I believe it's the representation of Highland itself.

3 Q. If Mr. Dougherty were to talk about the automotive
4 investments, would you have any reason to doubt Mr. Dougherty's
5 statements?

6 A. I think it was Mr. Dougherty at our offices that didn't
7 talk about significant automotive investments, so I'm only
8 basing it on what I think he said to me or to the company on
9 January 2nd.

10 Q. Are you aware that Highland has a multi-hundred million
11 dollar ownership of a credit facility of Ford Motor Company?

12 A. I think that the premise in the word "investments" here is
13 actually equity ownership and running of automotive companies
14 as opposed to -- ownership of as opposed to investing in their
15 securities.

16 Q. Okay. Mr. Sheehan, do you have an opinion whether the
17 Highland proposal provides greater recovery to the stakeholders
18 in this bankruptcy than the AHC proposal -- if those were
19 effectuated and implemented?

20 A. I'm not sure that I can draw a conclusion about that yet.

21 Q. Has the company received any advice on that subject?

22 A. I think the company hasn't reached a conclusion on that
23 subject yet.

24 Q. If you take a look at the same Rothschild presentation and
25 take a look at page 14 of that presentation labeled 1963 and it

1 is a proposal of recoveries among other things to various
2 stakeholder groups. Do you see that?

3 A. Yes, I do.

4 Q. And it's got -- the second table down, I'm trying to
5 describe it, is -- the second table -- the furthest column to
6 the right is titled "Total." Do you see that?

7 A. Yes, I do.

8 Q. Okay. And if you look at the page that is 1961, that's a
9 similar analysis for the Highland proposal. Do you see that?

10 A. Yes, I do.

11 Q. And do you see the same number which is the total -- under
12 the Recovery chart, do you see that same number?

13 A. I see that number, yes.

14 Q. And is the Highland proposal significantly higher than --
15 the recovery assuming conversion in the Highland proposal
16 significantly higher than the AHC proposal?

17 A. It is higher presuming that these two transactions were
18 able to be executed in exactly the same way.

19 MR. HAIL: I have no more questions, Your Honor.

20 THE COURT: Okay. Thank you. All right. Mr.
21 Butler?

22 MR. BUTLER: You think we could take a two minute
23 break?

24 THE COURT: Yeah, why don't we take a five minute
25 break? So I'll be back at 1.

1 (Recess from 12:55 p.m. until 1:06 p.m.)

2 THE COURT: Please be seated. Okay. We're back on
3 the record in Delphi. Mr. Butler?

4 THE COURT: Please be seated. Okay. We're back on
5 the record in Delphi. Mr. Butler?

6 MR. BUTLER: Thank you, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MR. BUTLER:

9 Q. Good morning, Mr. Sheehan. Mr. Sheehan, do you have the
10 exhibit book in front of you that has exhibits starting with
11 Exhibit number five running through Exhibit number 63?

12 A. I have that book.

13 THE COURT: I don't.

14 MR. BUTLER: I think --

15 THE COURT: There's one that begins with 6.

16 MR. BUTLER: Oh, I'm sorry, maybe it's 6. Maybe I
17 just can't read, Your Honor.

18 THE COURT: Okay.

19 Q. Number 6, right. Number 6, do you have that book?

20 A. Yes, I do.

21 Q. At issue in your cross examination by counsel was what the
22 board was told by you and what they were told by the company at
23 board meetings. Do you recall that cross examination?

24 A. Yes, I do.

25 Q. Okay. I'd like to walk you through and ask you questions

1 about what the board was told, starting with Exhibit 20. Would
2 you turn to that exhibit? Did you participate in a board of
3 director's meeting where this exhibit was presented to the
4 board?

5 A. Yes, I did.

6 Q. I'd like if you would please turn to page 17-69, as it's
7 marked in the lower right hand corner, 17-69.

8 A. Yes, sir.

9 Q. Can you generally describe what this page is?

10 A. This is labeled an economic analysis of what we refer to
11 as the AHC proposal -- the proposal that's finely embodied in
12 the framework agreements, and it takes the assumed enterprise
13 value of approximately 14 billion dollars, deducts the debt to
14 the expected debt at emergence and comes to the --

15 Q. Mr. Sheehan, I don't want you to put the numbers in
16 evidence.

17 A. I'm sorry.

18 Q. I'm just asking you whether you generally describe the
19 doc --

20 A. It's a document that sets out an expectation as to what
21 the ownership and economic recoveries of stakeholders would be.

22 Q. Mr. Sheehan, do you have a specific recollection as to
23 whether this page was presented to the board of directors of
24 Delphi Corporation?

25 A. Yes, I believe it was.

1 Q. And with respect to this page -- just very quickly going
2 back to Ms. Steingart's chart on plan investors. She pointed
3 you to the 63 million dollars discounted as institution shares,
4 right? Do you recall that?

5 A. Yes, I do.

6 Q. Do you recall that she asked you if that number was ever
7 presented to the board of directors?

8 A. Yes, I do.

9 Q. Having now looked at Exhibit 20, page 17-69, do you see
10 that number in this presentation? Look at the far right corner
11 table.

12 A. Yes, I do. Sorry.

13 Q. And do you see the 343, the second number. Is that his
14 presentation?

15 A. Yes, it is.

16 Q. In fact, Mr. Sheehan, these numbers that Ms. Steingart
17 asked you about here are both included in the presentation
18 presented to the board.

19 A. Yes, they are.

20 Q. Mr. Sheehan, this is another demonstrative Ms. Steingart
21 prepared. She graciously agreed that I could use it to -- in
22 this redirect examination. This is a chart that talks about
23 total plan investor compensation. Do you have a copy of the
24 chart in front of you? I think you have a copy.

25 A. No, I do not.

1 MR. BUTLER: May I?

2 MS. STEINGART: Oh, yes.

3 MR. BUTLER: Would you mind if I --

4 MS. STEINGART: No, no, please give them out.

5 MR. BUTLER: And does the Court have it?

6 MS. STEINGART: No, no, no.

7 THE COURT: I have it. No, I have it.

8 MS. STEINGART: Oh, you have it.

9 THE COURT: Yeah.

10 MS. STEINGART: Okay.

11 Q. This table has three columns to it. The first is -- do
12 you see the far left one is -- can you just describe that?

13 A. That's the proposal that was outstanding from the plan
14 investors on, I believe, November the 9th, 2006.

15 Q. And are you familiar with the center column?

16 A. Yes, I am.

17 Q. And what does the center column represent?

18 A. It represents the counter proposals by the joint UCC
19 creditors' committee on November 10, 2006.

20 Q. Prior to seeing this demonstrative chart were you familiar
21 that the equity committee and creditors' committee made such a
22 counter proposal?

23 A. Yes, I am.

24 Q. And in what context or in what meetings were those
25 proposals made, if you know?

1 A. There were a series of meetings that were going on between
2 the plan investors, Delphi, and the statutory committees in the
3 early part of November as we sought to reach agreement on the
4 framework for the investment by the plan investors and the
5 recoveries by the various constituencies.

6 Q. If you recall, where were those meetings held?

7 A. In New York City.

8 Q. And where in New York City?

9 A. At Skadden Arps offices in New York.

10 Q. Were these part of the framework meetings that had been
11 discussed in these pleadings?

12 A. Yes, they are.

13 Q. When did those framework meeting begin?

14 A. Well they began in the early -- very early in August --
15 the 1st of August in 2006.

16 Q. Now, in connection with the counteroffer that the equity
17 and creditors' committee made, insofar as you know, did they
18 ask the plan investors not to take a discount with respect to
19 the preferred shares?

20 A. No, they did not.

21 Q. And so far as you know, did the equity committee and
22 creditors' committee ask the plan investors not to take a
23 discount on the rights offer?

24 A. No, they did not.

25 Q. Okay. So as to the preferred commitment fees and as to

1 the right's offering commitment fees, so far as you know, was
2 the difference between the debtor, the plan investors and the
3 creditors' and the equity committee counter offer simply the
4 rates that are in the middle box? Is that correct?

5 A. That's correct.

6 Q. And the discounts were constant. Is that correct?

7 A. Yes, sir.

8 Q. Now, if you total up the fees in the first two boxes for
9 the equity and creditors' committee, what do those total --
10 just in dollar amounts?

11 A. 78 million dollars.

12 Q. And what are the actual fees being paid under the plan
13 investment agreement -- the EPCA?

14 A. The --

15 Q. Those same amounts?

16 A. 76 million dollars.

17 Q. So the amount actually being paid is less than the equity
18 committee and creditors' committee's counter offer. Is that
19 correct?

20 A. Yes, sir.

21 Q. Now, with respect -- just to be clear -- with respect to
22 the alternative transaction fee -- and just in fairness here --
23 there were far more material differences between the committees
24 and the plan investors and Delphi on that subject, isn't that
25 correct?

1 A. Yes, sir.

2 Q. And this chart fairly summarizes that, so far as you know?

3 A. As I recall.

4 Q. Let's go back to the other demonstratives that were used.

5 I want to go to the before demonstrative and the escape hatch
6 period that Ms. Steingart asked you so many questions about.

7 It was true that you were asked about this in your deposition
8 testimony?

9 A. Yes, I was.

10 Q. Okay. I have a question for you and I want you -- not
11 that all your testimony isn't straightforward and honest to the
12 Court -- but I want you to think about this question and just
13 tell the Court your reaction to it. Before Ms. Steingart asked
14 you these questions -- or you were asked these questions in
15 deposition -- about the ability of the plan investors to
16 theoretically terminate the PSA and then use a backwards escape
17 hatch to terminate the EPCA a day before the effective date of
18 a plan. Had you ever contemplated that being part of the deal
19 between you and the plan investors?

20 A. No, sir.

21 Q. Had you ever recommended to the board that the plan
22 investors have that kind of escape hatch?

23 A. No, sir.

24 Q. When that was highlighted to you in your deposition
25 testimony did you view that to be the deal, a mistake or just

1 unnoticed operation of the documents, or what? What did you
2 think that was when you gave your deposition testimony?

3 A. After the deposition testimony was completed we discussed
4 the subject and determined that it was an unintended
5 consequence which was then engaged in discussions between the
6 respective counsels for the plan investors and the company.

7 Q. And that's the -- that drafting change is what resulted in
8 the after picture, correct?

9 A. Yes, sir.

10 Q. Now, in the after picture, the plan investors still had
11 the right to terminate after April 1st, but prior to disclosure
12 statement approval order. Is that correct?

13 A. I believe that's correct.

14 Q. But they can't keep their fees. Is that correct?

15 A. That's correct.

16 Q. Ms. Steingart asked you about the fact that during that
17 period -- that escape hatch -- that it certainly was possible
18 that -- I think she asked a question that the plan investors
19 could look at the GM and labor agreements then and if they
20 didn't create the right kind of value they could just simply
21 walk away from the company -- something along those lines. Is
22 that right?

23 A. That was generally the line of questioning, yes.

24 Q. Isn't it true -- so far as you know -- doesn't the plan
25 investment agreement require the affirmative consent of both

1 the plan investors to the GM settlement?

2 A. Yes, it does.

3 Q. And isn't that also true with the labor agreements?

4 A. I believe that's -- yes, that's definitely correct.

5 Q. And don't they have independent termination rights much
6 earlier than April 1st if, in fact, they're not satisfied with
7 those agreements?

8 A. That's correct.

9 Q. So, when you're thinking about this, when we get to that
10 escape hatch period, are we going to have deals or not?

11 A. By the time we get to the escape hatch period, we will
12 have deals with General Motors and the labor unions and in
13 addition to that the final business plan would have been
14 approved by the plan investors. So I guess what I'm trying to
15 say is that all information will be available to them at that
16 point in time.

17 MS. STEINGART: I'm sorry. I didn't hear the last
18 part of the answer, Your Honor.

19 THE COURT: All information will be available to them
20 at that time.

21 Q. Mr. Sheehan, I'd like you now to look at -- we were on
22 Exhibit 20 a moment ago. You were asked a number of questions
23 about documents that contain summaries of the EPCA. It's true
24 isn't it, the board was given other documents as well in
25 connection with their consideration?

1 A. Yes, sir.

2 Q. Will you look at document number 23, please -- Exhibit
3 number 23?

4 A. Yes, sir.

5 Q. These are the -- would you describe these documents to the
6 Court -- this document -- what this exhibit is?

7 A. During the early part of November 2006 as we were
8 negotiating with the plan investors on the terms of their
9 investment and the other aspects of recoveries under the -- for
10 the constituencies in the Chapter 11 case -- this so-called
11 discussions points document was used as a -- I guess you could
12 call it a term sheet -- by the parties and was exchanged back
13 and forth.

14 Q. And that eventually was succeeded by the EPCA and the PSA,
15 is that correct?

16 A. That's correct.

17 Q. How about exhibit 24? Describe what that is to the Court.

18 A. Exhibit 24 represents a summary -- again I guess I would
19 call it a term sheet -- of the terms of the preferred stock
20 investment that would be made by the plan investors -- that
21 would have been made by the plan investors.

22 Q. And this particular EPCA --

23 MR. BUTLER: I mean, sorry, withdrawn.

24 Q. The summary of terms of preferred stock actually is part
25 of the EPCA now, is that correct -- as an exhibit?

1 A. I believe that's correct. Yes, it is an exhibit to the
2 EPCA.

3 Q. And were you at the board meeting when this document --
4 Exhibit 24 -- if you recall, were you at the board meeting of
5 Exhibit 24 where the board was presented this document and went
6 through the black lines?

7 A. Yes, I believe I was.

8 Q. Do you recall that presentation being made to the board?

9 A. I believe that was -- yes, I do.

10 Q. Let's move on now to the Exhibit number 27. Describe to
11 the Court what Exhibit 27 is.

12 A. Exhibit 27 represents a resolution of Delphi's board of
13 directors on December 7th, 2006.

14 Q. Regarding what?

15 A. Sorry. Regarding the framework agreements -- specifically
16 the EPCA and the PSA and approving -- the board of directors
17 approving that such documents -- that they're approved, adopted
18 and authorized in all respects and resolving that certain
19 officers of the company were designated to execute and deliver
20 them on behalf of the name of the company --

21 Q. I think that's -- I'm just trying to get generally
22 identified. You don't have to read it.

23 A. Okay.

24 Q. How many board meetings, if you recall, did the Delphi
25 board of directors hold in the ten days or so prior to the 18th

1 when the announcement was made, to consider the announcement
2 that was made on December 18th regarding the framework
3 documents? Was it more than one?

4 A. It was one, two -- at least three or four.

5 Q. And did that include a meeting on December 7th?

6 A. Yes, that's correct.

7 Q. If you look at Tab 32 -- Exhibit 32 for a minute, please.
8 What is this document?

9 A. This represents a summary of the issues that had been
10 discussed or had been provided to the company by the equity
11 committee during the course of the process and what the status
12 of those comments was or is.

13 Q. And this was on December 11th. Is that correct?

14 A. That's correct. It was as of December 11th.

15 Q. So if we come back to that diagram -- go back to exhibit
16 27 then -- this resolution was not adopted -- was it adopted or
17 not adopted on December 7th?

18 A. No, I think that the resolution was actually adopted on
19 December 11th, that originally we had drafted that resolution
20 for that board meeting on that night. However we weren't in a
21 position yet to finalize the agreements because there were
22 still outstanding deal points. And hence we updated the board
23 on that date and I think the resolution actually was adopted on
24 December 11th, if I'm not correct.

25 Q. And is the same thing true with the amendment to the

1 right's plan in Tab 28 -- Exhibit 28? When I say the same --
2 presented on the 7th, adopted on the 11th?

3 A. It was discussed with the board of directors on December
4 7th, presented to them and prior to the meeting, discussed as
5 to the purpose of the amendment and then it was then formally
6 adopted by the board on December 11th.

7 Q. On Exhibit 29 what does that document represent?

8 A. This represents a summary of the open issues with respect
9 to the EPCA -- the investment agreement on December 7th -- and
10 this was the document that was used by us to continue to track
11 the open issues that we had with the plan investors and how we
12 were handling those matters.

13 Q. Did you present this exhibit to the board of directors?

14 A. It was provided to the board of directors and reviewed
15 with them.

16 Q. And did you participate in the discussion with the board
17 where the board went through each of these items and each of
18 the items was reviewed and discussed?

19 A. Yes, it was. We wanted --

20 Q. Please.

21 A. No, it's okay.

22 Q. Exhibit 30, is this again the same? This is a summary of
23 the Equity Purchase Agreement -- was this also discussed on the
24 7th and then again on the 11th?

25 A. Yes, sir.

1 Q. Exhibit 31, you testified in your cross examination that
2 the plan framework support agreement was requested by the
3 directors. Do you have any personal knowledge as to why that
4 was requested?

5 A. My recollection would be is that one individual director
6 believed it was very important that the directors see the
7 document itself and therefore requested that it be distributed
8 to the full board of directors.

9 Q. Now, going back to Exhibit 32 -- now we're going to the
10 December 11th meeting -- is this the meeting at which the
11 framework documents were approved?

12 A. Yeah, that's my recollection.

13 Q. Can you explain to the Court -- first of all, was this a
14 summary prepared at your direction as the chief restructuring
15 officer of the company?

16 A. Yes, sir.

17 Q. Can you explain to the Court why you prepared a summary of
18 the 13 items that the equity committee was unhappy about and
19 presented that to the board of directors?

20 A. The equity committee had provided us with feedback and
21 communication indicating that their comments were not being
22 addressed, and asked us to review that specifically with the
23 board of directors so we felt it was important that the board
24 understand what we had been doing to seek to address the issues
25 that the equity committee had.

1 Q. And was there a discussion of those points after the board
2 meeting on December 11th?

3 A. Yes, we walked through and pointed it out to the board.

4 Q. With respect to Exhibit 33, is this the updated issues
5 list as of December 11th, and was this presented to the board?

6 A. Yes, it was.

7 MR. BUTLER: Just a moment, Your Honor, if I may.

8 Q. Ms. Steingart asked you a series of questions about the
9 alternative transaction fee. Just explain to the Court what
10 your emphasis was during those negotiations. Was it on the
11 definition of what an alternative transaction fee was, what the
12 tail was, what the triggers were, what the amount was? What
13 was the structure that you focused on the most and placed your
14 priorities, as chief restructuring officer of the company?

15 A. Our biggest focus was on making sure that the situations
16 in which an alternative transaction fee was paid were limited
17 to situations where either the creditors' committee selected an
18 alternative transaction, another plan investor, or
19 alternatively willfully breached the document. We believed
20 that only under those two circumstances was it appropriate to
21 pay an alternative transaction fee. And we, during the early
22 part of December, narrowed significantly from what we had
23 originally received from the plan investors -- narrowed
24 significantly those events. And it was the subject, actually,
25 of direct final negotiations between the plan investors and

1 myself and Rodney O'Neal, our president.

2 Q. Mr. Sheehan, just to be fair to the equity committee's
3 concerns and to the Court, I just want to be clear on this
4 record. An alternative transaction, the way it's defined in
5 this agreement, is essentially anything this company does after
6 this agreement terminates other than to convert to Chapter 7.

7 Isn't that right?

8 A. I think that's correct.

9 Q. So a stand alone plan is an alternative transaction,
10 right?

11 A. We discussed that, yeah.

12 Q. In fact, you and I actually talked about that the estate
13 of breathing was an alternative transaction, right?

14 A. I think that's the way you described it.

15 Q. And therefore tails and other things -- I think you
16 testified -- wasn't a real priority. Is that correct?

17 A. That's correct.

18 Q. You focused on when it could -- what would trigger it
19 because once it's triggered it inevitably is going to be paid.
20 Is that not correct?

21 A. That's correct.

22 Q. All right. And I think you've testified as to the two
23 instances -- willful breach or pick another deal.

24 A. Yes, sir.

25 Q. Okay. Just so the record's clear on this point, what's

1 the exercise price of the rights offering under this
2 transaction?

3 A. Thirty-five dollars per share.

4 Q. All right. And the valuations that were done here with
5 Ms. Steingart in terms of the implied value to the plan
6 investors, that's at the same price, is it not?

7 A. Yes, sir.

8 Q. When you met with Highland on January 2nd, did they tell
9 you at what level they would be willing to execute the price
10 list for the rights offering? Was it also thirty-five dollars?

11 A. Yes, it is.

12 Q. Is that --

13 A. Yes, it is. Sorry.

14 Q. Did you ask Highland to help you with -- explain how their
15 funds were committed to the December 21st proposal?

16 A. We did discuss that topic, yes.

17 Q. Did they provide you with any commitment of any of their
18 affiliates beyond the proposal made by Highland Capital, the
19 management company?

20 A. I don't believe so at the current time.

21 MR. BUTLER: I have no further questions, Your Honor.

22 THE COURT: Okay. Before you -- I had a couple
23 questions for Mr. Sheehan. Mr. Sheehan, do you have a copy of
24 the current form of the investment agreement there? Again, I'm
25 working off of my own copy so I don't know the exhibit number.

1 MR. BUTLER: I recall it to be in the sixties.

2 THE COURT: It's attached to 61 I think.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. If you go to page 52.

5 THE WITNESS: Yes, sir.

6 THE COURT: You'll see at the bottom of that page
7 there's a -- these are the conditions to the effective date.

8 THE WITNESS: Yes, sir.

9 THE COURT: And the last one on this page is labeled
10 management compensation. It says the company shall have
11 entered into employment agreements and other compensation
12 arrangements with senior management relating to compensation,
13 benefits, supplemental retirement benefits, stock options, and
14 restricted stock award severance and changing control
15 provisions and other benefits on market terms as determined by
16 the company's board of directors based on the advise of Watson
17 Wyatt and reasonably acceptable to ADAH and Dolce.

18 Have there been any -- or are there any agreements or
19 understandings currently between senior management on the one
20 hand and investors on the other, with regard to any of these
21 compensation arrangements beyond what's set forth in this
22 paragraph?

23 THE WITNESS: There are certainly no agreements, or
24 for that matter understandings. I think it would be fair to
25 say the only discussion that's taken place is that the

1 compensation of management -- that the plan investors would
2 expect that the compensation of management, that the total
3 compensation package would be at market terms. We've not had
4 discussion about any specific terms or conditions.

5 THE COURT: Okay. And then if you'll turn to page 44
6 of the same agreement -- the investment agreement. You'll see
7 at the top of that page it says additional covenants of the
8 investors, paragraph 6.

9 THE WITNESS: Yes, sir.

10 THE COURT: And if you go down to the last one, 6d,
11 it says reasonable best efforts, each investor shall use its
12 reasonable best efforts to take all actions and do all things
13 reasonably necessary, proper, or advisable on its part under
14 this agreement and applicable laws to cooperate with the
15 company and to consummate and make effective the transactions
16 contemplated by this agreement -- the preferred term sheet, the
17 PSA, the GM settlement and the plan. You see that?

18 THE WITNESS: Yes, I do.

19 THE COURT: Is there any additional agreement or
20 gloss on that provision that you're aware of among the parties?

21 THE WITNESS: I don't remember. There is -- I can
22 assure you that there are no other agreements between us and
23 the plan investors that have not been made aware to this Court
24 and I don't represent any specific importance that was attached
25 to this particular provision other than a --

1 THE COURT: Other than what it says?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. All right. Okay, Ms. Steingart.

4 RE-CROSS EXAMINATION

5 BY MS. STEINGART:

6 Q. Why don't I start where the Judge left off, Mr. Sheehan?

7 Is it your understanding that Section 6d limits, in any way,
8 the ability in the PSA for the plan investors to walk away for
9 any reason or no reason? Your understanding as a businessman
10 who negotiated these agreements.

11 A. Say it again for me. I'm sorry.

12 Q. I said as a businessman who negotiated these agreements --

13 A. Yeah, yeah.

14 Q. -- is it your understanding that this provision, 6d,
15 limits in any way the right of the plan investors under the PSA
16 to walk away for any reason or no reason?

17 A. No, I don't believe it does.

18 Q. Now, when Mr. Butler was talking to you about this escape
19 hatch, you were talking about all the agreements that would
20 have been entered into by that point, right?

21 A. Yes, ma'am.

22 Q. But no matter how many agreements that were entered into
23 at this point, is there anything that says that if there's an
24 agreement with the union, the plan investors can't walk after
25 April 7th -- sorry after April 1st?

1 A. There's nothing that says they can't, no.

2 Q. Right. And there's nothing that says that if there's an
3 agreement with GM that that prevents the investors from walking
4 on April 1, is there?

5 A. Except as -- no, there is nothing that prevents them from
6 doing that. That's correct.

7 Q. Right. And at this point in time the investors will take
8 another economic look at the deal, correct?

9 A. I can't say what the investors will do.

10 Q. And then they'll decide if they want to become committed
11 at that point. Because after the disclosure statement's
12 approved, that's the end of the walk away, right?

13 A. Yes, ma'am. Sorry. Yes, ma'am.

14 Q. So, they just need to have this economic look at the deal
15 after everything is done and before the disclosure statement is
16 filed, right?

17 A. Yes, ma'am.

18 Q. All right. And when that's done -- when the disclosure
19 statement is filed the marketplace will know what these deals
20 are, won't they?

21 A. Yes, ma'am.

22 Q. Because they'll be incorporated?

23 A. Yes, ma'am.

24 Q. Mr. Butler made a point about unintended results. Could
25 you look at Exhibit 86 with me, please?

1 A. Yes, ma'am.

2 Q. And can you read that to yourself, sir.

3 MR. BUTLER: Your Honor, maybe while the witness is
4 reading this, Ms. Steingart can explain how this exhibit
5 relates to my redirect examination.

6 THE COURT: I'm sorry. I was making my -- what
7 exhibit is this -- 81?

8 MR. BUTLER: 86.

9 THE COURT: 86.

10 MS. STEINGART: I just would direct the Court's
11 attention to the "in as much" paragraph.

12 THE COURT: I'm sorry. Did you have a question or
13 are we just asking the witness to read it?

14 MS. STEINGART: No, I was going to pose a question.
15 I was just waiting for the witness to look up.

16 THE COURT: Okay.

17 A. I've read it.

18 Q. Okay. So this is an e-mail from your counsel to Mr.
19 Lauria who represents Appaloosa and to Mr. Braid who represents
20 Serbers, correct?

21 A. That's correct.

22 Q. And I won't read the material, Your Honor, since it is
23 marked confidential. That's the way it should stay. Now, no
24 one slipped section 3, termination event, into the PSA without
25 you looking, did they?

1 A. No, ma'am.

2 Q. And no one slipped it in without your counsel looking, did
3 they?

4 A. No, I don't believe so.

5 Q. And as you were getting to that meeting on December 11th,
6 there was discussion going on about how broad that section was
7 becoming, correct?

8 A. Yes, ma'am. I don't know about becoming, but --

9 Q. And so that was topic that was front and center during
10 that period of time, correct?

11 A. There were significant discussions going on with respect
12 to the form of PSA and what the -- and how that overall
13 document would be drafted and what plan parties were willing to
14 have stated in that document.

15 Q. And this e-mail shows that there was a special
16 conversation going on about that termination provision, right?

17 A. The actual discussion was principally about section --
18 another section of the document and that the individual writing
19 the e-mail then indicates that, you know, as a result the
20 section you're referring to -- it makes an observation about
21 the section you're referring to.

22 Q. And there's some thinking about that and here, isn't
23 this --

24 A. I'm sorry?

25 Q. There's discussion about the broadness of --

1 A. Yes, in the e-mail.

2 Q. -- that article, right?

3 A. In the e-mail.

4 Q. Right. All right. And you don't know whether there was
5 continued correspondence on this issue, do you?

6 A. This was on December 8th and for another roughly ten days,
7 the parties continued to discuss the planned support agreement
8 resulting in the form of agreement that we have today.

9 Q. And they were discussing article 3 as well, weren't they?

10 A. As well as the entire agreement, that's correct.

11 Q. Now, you said you provided the entire PSA to the board,
12 correct?

13 A. Yes.

14 Q. Did anyone provide the board with a summary of how the
15 terms of the PSA and the investment agreement interacted?

16 A. No, ma'am.

17 Q. Just one last question on Exhibit 20, page 17-69, that you
18 were looking at with your counsel.

19 A. Page stamp 69?

20 Q. Um-hum, 17-69. That's the page that you were looking at
21 with Mr. Butler.

22 A. Yep. Got it.

23 Q. This document was prepared by Rothschild, wasn't it?

24 A. Yes, ma'am.

25 Q. And Rothschild listed this and this as discounts that the

1 plan investors were getting, didn't they?

2 A. That's the word that's on the header.

3 Q. And you have a recollection that this was discussed with
4 the board, right?

5 A. This was -- this presentation was reviewed with the board
6 of directors.

7 Q. And did you say to the board, no, no, no, no, they're not
8 getting so much, they're getting less. Did you say that?

9 A. No, I didn't say that.

10 Q. Okay. And there's another number here which is the 567
11 discount. Do you see the 567 discount?

12 A. Yes, I do.

13 Q. And that's 567 million, right?

14 A. Yes, ma'am.

15 Q. And that's the discount that common shareholders are
16 getting, but when they get this distributed to them, aren't
17 they?

18 A. If there's a full participation of the rights offering,
19 567 million is the value that would be conveyed to the common
20 shareholders.

21 Q. And the more complicated it is and the harder it is for
22 them to do that, the fewer of those rights will be taken up,
23 right?

24 A. Presumably.

25 Q. And then who gets them?

1 A. The plan investors have back stopped the rights offering.

2 Q. And so they will have additional shares that they're able
3 to enjoy a ten percent discount on, correct?

4 A. That's the way that transaction is structured.

5 MS. STEINGART: I have no further questions, Your
6 Honor.

7 THE COURT: Okay.

8 MR. BUTLER: Nothing either, Your Honor.

9 THE COURT: Okay. You can step down, Mr. Sheehan.

10 THE WITNESS: Thank you.

11 THE COURT: All right. I'm going to take a short
12 break for lunch. And I know this may be too short for some of
13 you because it takes awhile to get out of the building. But
14 I'd like to resume at about 2:30 if possible. So if you can
15 make your way up -- or start making your way up -- maybe it
16 will slip a bit, but that's what I'd like to aim for.

17 (Proceedings concluded at 1:48 p.m.)

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3

4 I, Esther Accardi, court approved transcriber, certify that the
5 foregoing is a correct transcript from the official electronic
6 sound recording of the proceedings in the above-entitled
7 matter.

8

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January 12, 2007

10

Signature of Transcriber

Date

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